



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

This review consideration decision is in response to an Application for Review Consideration filed by the Tenant pursuant to section 79 of the *Residential Tenancy Act* (Act). Specifically, the Tenant is requesting a review of a decision made by an Arbitrator on August 27, 2013.

On August 27, 2013 the Arbitrator concluded that the Tenant agreed to pay rent of \$1,000.00 for the basement rental unit; that he has not paid all the rent that was due; and that he owes the Landlord \$4,150.00 in unpaid rent. The Arbitrator further determined that the Landlord served the Tenant with a Ten Day Notice to End Tenancy and that the Landlord is entitled to an Order of Possession because the Tenant did not pay the outstanding rent or dispute that Notice by filing an Application for Dispute Resolution.

The Tenant is requesting a review of the Arbitrator's decision on the basis that there is evidence that the director's decision or order was obtained by fraud, pursuant to section 79(2)(c) of the Act.

Issues

Has the Tenant established grounds for review pursuant to section 79(2)(c) of the Act?

Facts and Analysis

Fraud is the intentional use of false information to obtain a desired outcome.

An unintended negligent act or omission is generally not considered to be fraudulent. Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information rendering the document false. Fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

A person applying for a review on the basis of fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator and that this evidence was a significant factor in the decision reached by the Arbitrator. The person applying for the review must show the newly discovered and material facts were

not known to the applicant at the time of the hearing, and were not before the Arbitrator. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

In support of the request for review pursuant to section 79(2)(c) of the *Act*, the Tenant declared that the Ten Day Notice to End Tenancy “has the wrong amount”. As the Ten Day Notice to End Tenancy was before The Arbitrator at the time of the hearing, I cannot conclude that this declaration was a newly discovered material fact. I note that an error in the amount owing on the Notice to End Tenancy does not necessarily render the Notice invalid.

In support of the request for review, the Tenant declared that he was “evicted on rent that isn’t owed”.

At the hearing the Tenant testified that rent was \$500.00 per month and the Landlord testified the rent was \$1,000.00. In her decision the Arbitrator concluded that that rent was \$1,000.00 per month.

The Landlord and the Tenant appear to have agreed that the Tenant only paid \$3,850.00 in rent for the period between December 01, 2012 and July 31, 2013. As the Tenant should have paid \$8,000.00 in rent for that period and the Tenant only paid \$3,850.00 in rent, the Arbitrator concluded that the Tenant still owed rent of \$4,150.00. It appears to me that the Arbitrator considered the testimony of both parties; that she favoured the testimony of the Landlord over the testimony of the Tenant; and that she concluded that rent was in arrears. The Tenant’s declaration that rent was not owed was presented at the hearing; it appears to have been considered by the Arbitrator; and the Tenant has not submitted new evidence that would show the Landlord’s testimony was false.

In support of the request for review, the Tenant declared that “we had a written agreement to pay \$500.00”. At the hearing the Landlord testified that there was no written tenancy agreement. There is nothing in the Arbitrator’s decision that would cause me to conclude that the Tenant alleged there was a written tenancy agreement.

The Tenant did not submit a tenancy agreement with the Application for Review Consideration. The Tenant submitted a Shelter Information Form, which declares that the total rent is \$1,000.00 and that the Tenant’s portion of the rent is \$500.00.

At the hearing the Landlord stated that he understood the Tenant was planning on finding a roommate and that he had people living with him periodically. The Tenant stated that he understood it was the Landlord’s responsibility to find a roommate to share the rent of \$1,000.00. In her decision the Arbitrator accepted the version of events provided by the Landlord. I find that the Shelter Information Form is consistent with the version of events provided by both parties and does not show that the Landlord provided false testimony in this regard.

The Tenant submitted allegations of a variety of deficiencies with the rental unit. As the condition of the rental unit was not in dispute at the hearing, I find that these allegations did not factor in the decision reached by The Arbitrator and do not, therefore, support the application for review.

The Tenant alleges that the Landlord entered rental units without proper notice and has been verbally aggressive. As these issues were not in dispute at the hearing, I find that these allegations did not factor in the decision reached by the Arbitrator and do not, therefore, support the application for review.

Decision

I find that the Tenant has failed to establish that the Arbitrator's decision was based on fraudulent evidence and I therefore dismiss the application for review, pursuant to section 81(1)(b)(ii) of the *Act*.

The Arbitrator's decision and Orders of August 27, 2013 remain in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 10, 2013

Residential Tenancy Branch