Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute codes: CNR FF MNDC O

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 the original decision made by an Arbitrator on November 06, 2013.

On November 06, 2013 the Arbitrator granted the Landlord a monetary order for unpaid rent, in the amount of $1765.25; he granted the Landlord authorization to retain the Tenant's security deposit; and he granted the Landlord an Order of Possession.

Section 79 of the *Act* reads:

> (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
> (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
> (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
> (b) a party has new and relevant evidence that was not available at the time of the original hearing;
> (c) a party has evidence that the director's decision or order was obtained by fraud.

The Tenant is requesting the review of the Arbitrator's decision on the basis that she has new and relevant evidence that was not available at the time of the original hearing and she has evidence that the Arbitrator's decision and Orders were obtained by fraud, pursuant to sections 78(2)(b) and 79(2)(c) of the *Act.*

Issues

Has the Tenant established there are grounds to review the Arbitrator's decision, pursuant to section 79 of the *Act?*

Facts and Analysis

In support of the request for review pursuant to section 79(2)(b) of the *Act,* the Tenant declared that the Landlord was "lying" regarding the number of times the Tenant complained about the occupant living upstairs; that the Landlord gave her a second Notice to End Tenancy; that the Landlord also gave her a Two Month Notice to End Tenancy for Landlord's Use of Property; that she was "tricked" into thinking it was okay for her to be out on November 30, 2013; that the rent was accepted for July, August, September, and October; that she has lived in the unit for thirteen years; that she has a second dispute hearing scheduled for December 12, 2013; that the Landlord is using the property for his own use; that the Landlord owes her one month's rent; and that she is moving out on November 30, 2013.

Residential Tenancy Policy Guidelines define "evidence" as any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution proceeding hearing. In regards to applying for a review on the basis of new and relevant evidence, Residential Tenancy Policy Guidelines suggest that evidence which was in existence at the time of the original hearing, and which was not presented by the party will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

The Tenant submitted two Ten Day Notices to End Tenancy for Unpaid Rent and one Two Month Notice to End Tenancy for Landlord's Use of Property, all of which were dated in September. As these documents were clearly in existence prior to the hearing on November 06, 2013, they cannot be considered "new" evidence, as they were in existence at the time of the hearing. These documents should have been introduced at the hearing on November 06, 2013 if the Tenant believed they were relevant to the Arbitrator's decision. I note that one of the Ten Day Notices to End Tenancy and the Two Month Notice to End Tenancy were discussed at that hearing.

I also find that the declaration that the Tenant complained about the occupant living upstairs on more than one occasion; that the Tenant was "tricked" into thinking it was okay for her to be out on November 30, 2013; that the rent was accepted for July, August, September, and October; that the Tenant has lived in the unit for thirteen years; that the Landlord is using the property for his own use and that she is moving out on November 30, 2013 are all issues that the Tenant could have raised at the hearing on November 06, 2013 if the Tenant believed they were relevant to the Arbitrator's decision. As these issues could have been raised at the hearing, I find that they cannot be considered "new" evidence.

Although the Tenant does not explain the issues on dispute at the dispute resolution proceeding that is scheduled for December 12, 2013, Residential Tenancy Branch records show that she did file an Application for Dispute Resolution on October 24, 2013, which is scheduled to be heard on December 12, 2013. As the issues in dispute at the hearing scheduled for December 12, 2013 were known to the Tenant on November 06, 2013, the Tenant could have raised them at the hearing on November 06, 2013 if the Tenant believed they were relevant to the Arbitrator's decision. As these

issues could have been raised at the hearing, I find that they cannot be considered "new" evidence.

Although the Tenant does not explain why the Landlord owes her one month's rent, I find it reasonable to presume that she believes the Landlord owes her one month's rent, pursuant to section 51(1) of the *Act*, because she was served with a Two Month Notice to End Tenancy for Landlord's Use of Property. It is clear from the Arbitrator's decision that this issue was discussed at the hearing on November 06, 2013, and it cannot, therefore, be considered "new" evidence.

I find that the Tenant has not established that she has new and relevant evidence that was not available at the time of the original hearing, and I dismiss her application for review pursuant to section 79(2)(b) of the *Act.*

In support of the request for review pursuant to section 79(2)(c) of the *Act,* the Tenant declared that the Landlord "lied" when he stated that the Tenant only reported one disturbance; that she has witnesses that confirm she complained on many occasions; and that she believes the Arbitrator was influenced by the Landlord's testimony regarding the police telling him "the guy was harmless".

A party who is applying for review on the basis that a decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator and from which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review.

As the Arbitrator's decision to end the tenancy and to grant the Landlord a monetary Order was related to the non-payment of rent, I find that any evidence regarding the Tenant's complaints about disturbances were not material to the matters before the Arbitrator and would not, therefore, has been significant to his conclusions.

I find that the Tenant has not established that the Arbitrator's decision has been obtained by fraud and I dismiss her application for review pursuant to section 79(2)(c) of the *Act.*

Decision

As the Tenant has failed to established evidence of a ground for review, I dismiss her application for a review pursuant to section 81(1)(b)(ii) of the *Act.* the Arbitrator's decision and Order of November 06, 2013 stand.

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: November 18, 2013

Residential Tenancy Branch