



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC ERP LAT LRE MNDC PSF

Introduction

This is an application by the landlord for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on March 31, 2011, with respect to applications for dispute resolution from both the landlords and the tenants.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The female landlord (the landlord) applied for a review of the decision on the basis of the second and third grounds as outlined above.

Facts – New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;

- the evidence is new;
- the evidence is relevant to the matter which is before the DRO;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the DRO.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

It is up to a party to prepare for a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing.

“Evidence” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence.

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.

“New” evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained before the hearing took place. Evidence that “would have had a material effect upon the decision of the DRO” is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

Analysis – New and Relevant Evidence

In response to the instruction “List each piece of new and relevant evidence which was not available at the time of the original hearing”, the landlord identified a “Letter of reference for tenants child to get accepted into a Christian pre school Program.” In response to the request to state why this evidence was not available at the time of the hearing, the landlord explained that “The proper evidence was not provided to the DRO so she could not make a decision on this based on accusations and it was not discussed during the telephone conversation.”

The remainder of the information the landlord provided in her request for review on the basis of new and relevant evidence provided an explanation for the circumstances regarding her interaction with the tenant related to religious studies she was providing to the tenant. She stated that notes included in a bible she gave the tenant were entered

into written evidence at the March 17, 2011 hearing, but the July 29, 2010 letter itself was not.

Based on the wording of the March 31, 2011 decision, it seems clear that the landlord was given an opportunity to provide oral testimony regarding the issues identified in the tenants' application for dispute resolution. The landlord failed to provide any explanation as to why she could not have provided a copy of her July 29, 2010 letter in advance of the scheduled March 17, 2011 hearing.

I find that the landlord's evidence is not new and could certainly have been obtained and provided in advance of the March 17, 2011 hearing. I find that the landlord has failed to meet most of the five criteria outlined above that would enable me to grant her request for a review of the March 31, 2011 decision. Much of her application for review appears more in the nature of an attempt to re-argue the matters that were before the DRO at the original hearing.

I dismiss the landlord's application for review on the basis that the application discloses insufficient evidence of this ground for review.

Facts- Fraud

This ground applies where a party has evidence that the DRO's decision was obtained by fraud. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the DRO's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the DRO, and that the evidence was a significant factor in making 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 DRO, and from which the DRO 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. If the DRO finds that the applicant has met this burden, then the review will be granted.

A review hearing will likely not be granted where a DRO prefers the evidence of the other side over the evidence of the party applying. It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the DRO.

In this case, the landlord alleged that she had never met SS, the author of a March 8, 2011 letter of support for the female tenant. The landlord also maintained that “there was no police report or evidence provided for the said damages for breaking into his car.”

Analysis - Fraud

A dispute resolution hearing is a formal adjudicative process. It is up to each party to present their cases for consideration by the DRO. While a DRO may ask specific questions to clarify his or her understanding of the evidence, it is not the responsibility of the DRO to check with the parties regarding each piece of oral and written evidence submitted. The landlord bears responsibility for presenting evidence and challenging evidence presented by the tenants. The landlord has not explained why she was prevented from raising issues regarding the tenants’ written evidence at the hearing.

Neither the information now submitted, nor the landlord’s description of the issues demonstrates fraud as outlined above. I find that the landlord has not submitted sufficient evidence to demonstrate that the original decision was obtained by fraud. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review.

Overall, the landlord’s application does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied.

The original decision is therefore confirmed.

Decision

The decision made on March 31, 2011 stands.

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*.