



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

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.

In this application, the tenant has applied for review under Ground 2.

Issues

Has the applicant for review provided sufficient evidence to support the indicated ground for review?

Facts and Analysis

The tenant alleged in his request for extension of time to apply for review that he did not receive the "tenancy letter" by mail until October 3, 2011. It is not clear what the tenant meant by the "tenancy letter."

The tenant also stated in his application that he had new and relevant evidence that was not available at the time of the hearing.

The tenant submitted this evidence, including email communication, emails showing replies from the landlord, and a bank receipt for some payments made.

In a review consideration, when claiming that new and relevant evidence exists that was not available at the time of the hearing, the applicant must prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

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. The tenant produced evidence dating back to December 15, 2010, which contradicts that the evidence was new.

With one exception of an email transmission by the landlord, the evidence alleged by the tenant to be new existed prior to the date of the hearing.

The tenant also stated in his review application that he did not know he was being evicted, so he didn't prepare. However the applicant's evidence indicates that the respondent/landlord informed the applicant on September 22, 2011, that any funds received were for use and occupancy only.

I therefore do not accept the tenant's claim that he had new and relevant evidence that was not available at the time of the hearing.

Decision

I **dismiss** the application for review and confirm the original decision and order of September 29, 2011.

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: October 17, 2011.

Residential Tenancy Branch