



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ET

This is an application by the tenant for a review of a decision made September 26, 2011.

Section 79 of the *Residential Tenancy Act* provides that a Dispute Resolution Officer's decision may be reviewed if:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her 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 Dispute Resolution Officer's decision was obtained by fraud.

In this matter, the Applicants apply for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing;
- A party has evidence that the Dispute Resolution Officer's decision was obtained by fraud.

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

- the issues raised can be dealt with under the provisions of the Legislation that allow an Dispute Resolution Officer to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or 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 Dispute Resolution Officer should be set aside or varied;
- the application is frivolous or an abuse of process;
- The applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

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 Dispute Resolution Officer;
- the evidence is credible; and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer .

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

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 is evidence that has come into existence since the hearing. It 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 is “relevant” if it relates to the matter at hand, or tends to prove or disprove an alleged fact.

Evidence that “would have had a material effect upon the decision of the Dispute Resolution Officer” 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.

A suspicion of fresh evidence is not sufficient.

Decision Obtained by Fraud

This ground applies where a party has evidence that the Dispute Resolution Officer'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 Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that the 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 Dispute Resolution Officer, and from which the Dispute Resolution Officer 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 Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

A review hearing will likely not be granted where a Dispute Resolution Officer 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 Dispute Resolution Officer.

FINDINGS

Unable to Attend Hearing

The decision indicates that the applicants were in attendance at the hearing. In the application for review the applicants state that they were "...waiting for the Police to call back and tell us what the file # referred to...see attached". The attachments are photocopies of RCMP member business cards with file numbers and a list of file numbers and dates and handwritten notes. A letter dated September 30, 2011 where the author is unknown and some photocopies of photographs some of which are unidentifiable and the others depict debris on a lawn. There are no details as to how this information relates to the matter or why it was not available at the time of the original hearing. I therefore find that the application for review does not meet the five

criteria set out above that would allow me to order a review in this matter based on “new and relevant evidence”.

Decision obtained by Fraud

I find that the applicant has not met the burden of proving that he has new and material facts, or newly discovered and material facts, which were not known to him at the time of the hearing, and which were not before the Dispute Resolution Officer, from which I, in the conduct of this 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.

In overall conclusion I find that the application does not disclose sufficient evidence of a ground for review.

The original decision is therefore confirmed.

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*.
