



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

APPLICATION for REVIEW

Dispute Codes: FF MNR MNSD OPR

Introduction

This is an application by the tenant for a review of the decision of Dispute Resolution Officer * dated November 4, 2011.

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 one of the indicated grounds for review?

Facts and Analysis

The application contains information under Reason Number 2.

The tenant in her application for review submitted that she had new and relevant evidence that was not available at the time of the hearing.

The evidence submitted by the tenant in her application for review of a hearing held on November 4, 2011, which she claimed was not available at the time of hearing included a letter from a law firm, dated September 13, 2011, Notice of Assignment of Rent from a credit union, dated October 27, 2011, Affidavit dated October 21, 2011, and a Petition to the Court started on October 21, 2011.

Under the Dispute Resolution Proceedings Rules of Procedure, a party must present copies of all available documents, photographs, video or audio tape evidence they

intend to rely upon as evidence at the dispute resolution proceeding at least five (5) days before the dispute resolution proceeding.

Under Residential Tenancy Branch Policy Guidelines, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing.

Evidence in existence at the time of the original hearing 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.

I find that the tenant's documentary evidence submitted with her application for review was not new and was available at the time of the hearing, due to the DRO's reference to the Assignment of Rents in the Decision of November 4, 2011, and the dates listed on the evidence submitted with the application. I therefore do not accept the tenant's claim that she has new and relevant evidence that was not available at the time of the original hearing.

Decision

I dismiss the application for review and confirm the original decision and order of November 4, 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: November 22, 2011.

Residential Tenancy Branch