Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF MNDC OLC

Introduction

This is an application by the landlords for a review of a decision rendered by a Dispute Resolution Officer (DRO) on November 22, 2011, with respect to an application for dispute resolution by 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 DRO should be set aside or varied.

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 landlords applied for a review on the basis that they had new and relevant evidence that was not available at the time of the original hearing, the second of the grounds outlined above.

Facts and Analysis

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.

The landlords chose to provide a typed response attached to their application in response to the instruction to list each piece of new and relevant evidence which was not available at the time of the original hearing. Their application was not directed at the DRO's decision to cancel the landlord's One-Month Notice to End Tenancy for Cause, but the other portions of that November 22, 2011 decision.

The landlord identified the following "two simple reasons" for seeking a review of this decision on the basis of new and relevant evidence:

1. *Attic cannot be used as sleeping quarters due to fire hazard.*

2. *Tenant cannot rent out any parts of the suite without consent of the Landlord.*

They added the following by way of explanation of their application:

> *…The Landlord has never interfered or intrusively monitored the Tenant's visitors. The Landlord has also not ignored the warning issued in a prior decision restricting the use of the attic other than as sleeping quarters.*
>
> *SR is a professional management company and strictly conforms to all civil and rules and regulations of the Residential Tenancy Act.*
>
> *Therefore, there is no reason that the tenant should be entitled to any rebate…*

The landlords also provided additional details, all of which could have been presented at the original hearing. They included the following additional exhibits they offered as new evidence:

> *Excerpt from Landlord's insurance policy*
> *Photos of the ladder to the attic*
> *Photos showing attic in December 2010 and October 2011*
> *Application for tenancy of ADGF dated September 8, 2011*
> *Landlord's evidence from December 12, 2010 hearing File # 123456. E-mail correspondence between MG, TB and CW, and photos of room rented by CW.*

The landlords concluded with various observations regarding the circumstances surrounding this tenancy. Landlord EE who signed the application for review also noted that she took exception "to the referral of my voice as being less than respectful communication," explaining that she has a chronic problem with her voice and that this "should not influence unjustly for this reason."

After giving the landlords' application for review and attachments careful consideration, I find little new and relevant that would have had a material effect on the DRO's decision. Most if not all of the evidence presented by the landlords as "new and relevant" could have been produced at the original hearing. The landlords failed to provide any explanation as to why this evidence could not have been provided at the original hearing. Neither the information now submitted, nor the landlord's awareness of the issues is new. I find the landlords' new evidence submitted on this application for review is more in the nature of an attempt to re-argue the same matters that were before the DRO on the original hearing.

The review process is not intended to provide a party with an opportunity to present additional evidence that was available but not presented at the original hearing in order to strengthen arguments that were considered but rejected by the DRO at the original hearing. Much of the landlords' evidence appears to be a reiteration of her claim that the tenant's evidence should not have been accepted and that the DRO should not have reached the decision she arrived at in her November 22, 2011 decision. The decision of a DRO is final and binding subject to the three grounds for applying for a review as set out earlier in this decision.

I find that the landlords' application fails to meet the following criteria that the application needs to demonstrate in order to obtain a review of the original decision:

- I find that the landlords' application does not show that this evidence was not available at the time of the original hearing. I find that much of the landlords' evidence is not relevant to the matter before the DRO.
- I find that much of the landlords' evidence is not new but was raised with the DRO at the original hearing.
- I find that the evidence in the landlords' application would not have had a material effect on the decision of the DRO.

For these reasons, I deny the landlords' application for review on the ground that she has new and relevant evidence not available at the time of the original decision is denied. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review.

Decision

The decision made on November 22, 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*.

Dated: December 22, 2011

Residential Tenancy Branch