



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MND MNDC MNR MNSD

### **Introduction**

On November 16, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord has applied for a monetary order and for an order to retain the security deposit. The Dispute Resolution Officer dismissed the landlord's application. The landlord has applied for a review of this decision.

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 applicant relies on section 79(2)(b) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

### **Issues**

Does the tenant have new and relevant evidence that was not available at the time of the hearing?

### **Facts and Analysis**

#### **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 hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

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 an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. 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 arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

I note that in his application for review, the applicant has listed two items which he states is new evidence. The items are the move in and move out condition inspection reports. The landlord states that the move in inspection report was not provided at the original hearing as it was “*understood that the Residential Tenancy Board had the original of this form a COPY of this form was given when possession of the home in March 18/2011 took place.*”

Regarding the move out inspection report, the landlord states that “*the original one submitted in the original case has the information written in the wrong column therefore this has been adjusted and therefore is considered NEW evidence*”

The landlord has provided copies of both these documents. I find that both documents existed prior to the hearing and assuming that there is a copy on file does not form grounds for submitting the document at a later date, as new evidence.

In addition, the Dispute Resolution Officer based his decision on the evidence in front of him. In the absence of a move in inspection report, the Dispute Resolution Officer was unable to determine the condition of the rental unit at the start of the tenancy.

I also find that rewriting a report to correct errors does not make it new evidence. Therefore I find that the move out inspection report filed with the application for review is not new evidence.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence. All the evidence listed above was in existence at the time of the hearing.

I find that the tenant has not submitted any new evidence and therefore has failed to meet both parts of the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

### **Decision**

The applicant has failed to establish grounds for review in this tribunal and accordingly, I find that the application for review must fail. For the above reasons I dismiss the application for leave for review. **The original decision made on November 16, 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 02, 2011.

---

Residential Tenancy Branch