



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR RR

Introduction

On November 24, 2011, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for an order to cancel the notice to end tenancy for unpaid rent and for a monetary order for compensation. The Dispute Resolution Officer granted the tenant'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 letters from himself and from a witness who was unable to attend the hearing. The landlord states that he did not have enough time to submit these letters and the evidence that he did submit was not considered by the Dispute Resolution Officer because it was late.

The letters attached to his application indicate the efforts made by the landlord and the witness to resolve the water problem and state that the tenant did not assist in the repairs. The landlord states that he was unable to present this evidence during the hearing as the Dispute Resolution Officer prevented the landlord from testifying by cutting him short due to time constraints.

Upon review of these letters, I find that they could have been obtained prior to the hearing and if the landlord did not have enough time to serve these documents, the landlord and the witness could have testified at the hearing.

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. The landlord is alleging procedural unfairness when he states that he was not given an opportunity to present his testimony.

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 or procedural unfairness.

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

Decision

The applicant has failed to establish grounds for review in this tribunal and accordingly, I dismiss the application for leave for review. **The original decision made on November 24, 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 16, 2011.

Residential Tenancy Branch