



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

On November 17, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and for a monetary order for unpaid rent. The Dispute Resolution Officer granted 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 applicant 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.

Evidence which was in existence at the time of the original hearing, will not be accepted on this ground. “New” evidence includes evidence that has come into existence since the arbitration hearing.

I note that in his application for review, the applicant states that the Dispute Resolution Officer made a mistake about the names of the respondents on the amended application, when she decided that they are different from the names on the tenancy agreement. The landlord adds that the *“evidence was present at the time of hearing but I am resubmitting it anyway”*.

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 evidence consisting of the tenancy agreement, was in existence at the time of the hearing. By the applicant’s own admission in his application for review, he agrees that the tenancy agreement was available at the time of the hearing.

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.

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.

The landlord may also apply for a correction if there is a spelling mistake in the names of the respondents in the amended application.

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 17, 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 23, 2011.

Residential Tenancy Branch