



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC O

Introduction

This is an application filed by the tenant on December 28th, 2011 for review of a Dispute Resolution Officer's decision and order dated December 13th, 2011 on the above noted matter.

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.

Issues

In this matter the tenant relies on the second ground; new and relevant evidence not available at the time of the original hearing.

Facts and Analysis

In her application for review the tenant provided a doctor's note dated December 23rd, 2011, which states that due to medical concerns, a "Donald" will have to stay with the tenant. The tenant stated that she did not know that the note was required for the hearing.

Residential Tenancy Policy Guideline #24 addresses the grounds for review. Concerning new and relevant evidence the guideline states in part:

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 to 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...

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 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, such as photographs that could have been taken or affidavits that could have been sworn before the hearing took place.

In order to be considered new, the applicant must prove that:

- The evidence was not available at the time of the original hearing.
- The evidence is new.
- The evidence is relevant to the matter which is before the Dispute Resolution Officer.
- The evidence is credible.
- The evidence would have a material effect on the decision.

I find that the note does not meet the criteria of new evidence that was not available for the original hearing. It is not sufficient to present a lack of awareness as reason for not presenting relevant evidence, particularly when the evidence was, as stated in the guideline, attainable through taking reasonable steps. The tenant’s failure to understand the relevance of the evidence does not make it new.

Further, the tenant did not explain how the note would have changed the outcome of the original decision. Section 81 of the Act provides in part that the director may dismiss or refuse to consider an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

For the above noted reasons I find that the tenant has not provided sufficient grounds to grant a review of the original decision.

Decision

The decision made on December 13th, 2011 is hereby confirmed.

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: January 04, 2012.

Residential Tenancy Branch