Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC RR

Introduction
This is an application by the female tenant (the tenant) for a review of a decision rendered by a Dispute Resolution Officer (DRO) on March 12, 2012, with respect to an application for dispute resolution from 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 arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

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 female tenant (the tenant) applied for a review of this decision on the basis of the second ground as outlined above.

Facts – 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 original dispute resolution 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.

Analysis – New and Relevant Evidence

In response to the instruction "List EACH item of new and relevant evidence and state WHY it was not available at the time of the original hearing and HOW it is relevant", the tenant responded as follows:

> *See attached Pages*
>
> 1. *Telephone connection was not clear, at one point, I was saying "Hello, Hello…" I couldn't hear anything. A hearing is preferred.*
> 2. *Was not under Oath*
> 3. *New evidence is presented*

Neither of the first two reasons outlined above as "new and relevant evidence" qualify as new and relevant evidence for the purposes of obtaining a review of a final and binding decision issued by a DRO. Both of these "reasons" cited by the tenant involve what transpired during the hearing itself and how the hearing was conducted. I note that if the tenants had preferred to conduct this hearing in person, they could have requested one when they applied for dispute resolution. If the female tenant was having difficulty hearing the proceedings, she also could have brought this to the attention of the DRO conducting that hearing. At any rate, issues of this nature are not included in section 79(2) of the *Act* as a ground for seeking a review hearing.

In the attached pages accompanying the tenant's application for a review of the original decision, the tenant provided a two-part document entitled Supplementary Evidence. In this document, the tenant provided an Introduction/Background as Part I, and a Statement of Facts/Documentary Evidence as Part II, which included a 2008 decision of the Supreme Court of British Columbia. The tenant also attached:

- a March 18, 2012 Statement of KF (her co-tenant);
- a March 13, 2012 gas bill for $25.00 in apparent support of the tenants' initial claim for a monetary award;
- one March 1, 2012 receipt from the landlord;
- one March 2, 2012 receipt from the landlord; and
- a 2007 decision of the Supreme Court of British Columbia.

I first note that much of the tenant's evidence identified as "new" pertains to interactions that occurred prior to the March 9, 2012 hearing. The tenant maintained that the tenants could not have submitted copies of the receipts handed to the co-tenant on March 1, 2012 and March 2, 2012 into written evidence because the tenants had already submitted their written evidence package in support of their application for dispute resolution on March 1, 2012, prior to obtaining either of the receipts in question

from the landlord. There was nothing stopping the tenants from submitting these receipts as part of an additional batch of written evidence in support of their application. In fact, the Residential Tenancy Branch (the RTB) frequently receives multiple submissions of written evidence from parties prior to a hearing. Had the tenants presented this additional written evidence to the RTB and the landlord on March 3, 2012, they would still have been within the 7-day time limit for submitting their evidence. As they live in the same community as both the landlord and an RTB office, I am unaware of any reason why they could not have submitted this evidence within the time limits established under the *Act*. However, even had they delayed submitting their evidence a few days, the *Act* does allow a party to request that a DRO consider late evidence. Since the evidence in question were two receipts issued by the landlord, the landlord would clearly have been aware of this evidence and would not have been adversely affected by any late submission of this evidence.

In the tenant's application for review, she questioned the following statement in the original decision claiming that "there is a conflict of evidence.'

> *...The landlords testified that they received a rent payment for March, but it was accepted for "use and occupancy only" and the acceptance of the March payment did not constitute a reinstatement of the tenancy...*

Even without submitting the two receipts from the landlord that were clearly in the tenants' possession prior to this hearing, the female tenant, the only tenant who participated and gave evidence on the tenants' behalf at the March 9, 2012 hearing, had the opportunity to question or dispute the landlords' above-noted testimony. The original decision provides no reference to the tenant having disputed this evidence provided by the landlords at the hearing.

I also note that Tenant KF's March 18, 2012 statement provides a mix of issues that could have been entered by him into oral or written evidence at the hearing, new information regarding the tenants' ongoing plans for this tenancy, and updates, changes or revisions to what they appear to have hoped would be some type of continuation of the consideration of their original claim. The provision for a review on the basis of new and relevant evidence is not one that allows a party to raise new issues or perspectives on the basis of changes in circumstances that have occurred following the original hearing. For example, I am not in a position to grant a review request on the basis of the tenant's submission of a gas bill for an expenditure that occurred after the hearing and the issuance of a final and binding decision. This is not the purpose of the provision in the legislation that enables reviews of a DRO's decision.

I also find that much of the evidence presented by the tenants as "new and relevant" has little relevance to the factors identified by the DRO in reaching his decision regarding the tenants' claim for a monetary Order. Although I have reviewed the Supreme Court of B.C. decisions submitted as part of the tenant's application for a review, I am at a loss to understand the relevance of these decisions to the tenant's request for a review of the decision of March 12, 2012. I also question whether any of the evidence submitted as new and relevant by the tenant would have had any material effect on the original decision regarding the tenants' claim for a monetary Order.

I find that the tenant has failed to meet most of the five criteria outlined above that would enable me to grant her request for a review of the March 12, 2012 decision. As outlined above, much of this information presented as new and relevant was available at the time of the original hearing. Evidence pertaining to events or parts of their claim that occurred after the original hearing is not a valid ground for obtaining a review of the original decision. I also find that the evidence submitted as new and relevant has little relevance to the tenants' claim nor would the consideration of this evidence have been likely to have had a material effect on the original decision.

I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. Overall, the tenant's application does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied.

I confirm the original decision in this matter.

Decision

The decision made on March 12, 2012 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: March 30, 2012

Residential Tenancy Branch