



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR

Introduction

On February 28, 2012, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. The Dispute Resolution Officer granted the landlord an order of possession and a monetary order. The tenant 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 sections 79(2)(a) and (b) of the *Residential Tenancy Act* (the "Act"). Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. Section 79(2)(b) 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

Was the tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control? Does the tenant have new and relevant evidence that could change the decision?

Facts and Analysis

Unable to Attend

The tenant attended the hearing and therefore, I find that the application for review on this ground does not apply.

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

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.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant states that the landlord entered the rental unit three times without notice, used foul language when speaking with the tenant's girlfriend, slandered the tenant and his girlfriend to the police, withheld his mail and made sexual advances towards him. The tenant also states that the landlord told him that a security deposit was not required in lieu of work done by the tenant for the landlord, but then went ahead and used half month's rent as security deposit.

Upon reviewing the evidence filed by the tenant, I find that it is not new evidence that was unavailable at the time of the hearing.

With respect to the matter the tenant asserts is new evidence, it was not a matter unknown to the tenant at the time of the original hearing. It was in existence and could have been submitted at the original hearing. The tenant may disagree with the Dispute Resolution Officer's findings of fact, but had an opportunity to respond to the landlord's evidence at the hearing.

The Dispute Resolution Officer made his decision based on the fact that the tenant did not pay rent within five days of having received the notice to end tenancy for non

payment of rent. Therefore, even if the tenant's evidence is accepted as new it will not change the decision of the Dispute Resolution Officer.

Section 81(1) (b) (iii) of the Act allows the director to dismiss 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. 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 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.

Decision

The decision made on February 28, 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 16, 2012.

Residential Tenancy Branch