



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ERP O RP

Introduction

The Decision/Order under review is a decision on cross applications. The Tenant applied for repair Orders. The Landlord applied for an Order of Possession, a Monetary Order, and to apply all or a portion of the security deposit towards satisfaction of the Landlord's monetary award. The Tenant's application was dismissed. The Landlord was granted an Order of Possession. The Landlord's application for a Monetary Order was dismissed and therefore the security deposit remained available on application by either party in accordance with the provisions of the Act.

The Hearing was conducted on March 14, 2012. The Landlord submits that she received the Decision on March 23, 2012, when it was "picked up". In this case, the Landlord filed her Application for Review on the last allowable day for submission.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 following 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 Landlord applies for review on the second and third grounds set out above.

Issues

Does the Landlord have **new and relevant** evidence that was not available at the time of the original hearing?

Does the Landlord have evidence that the director's decision or order was obtained by fraud?

Facts and Analysis

Regarding new and relevant evidence:

In her Application for Review Consideration, the Landlord indicates:

- “ – Notarized affidavit of my hairdresser, [name of hairdresser]
- It was not available at the time of the hearing as I had not had my hair done.
- The affidavit is relevant because it proves how long my hair had not been done & the tenant claims that she was doing my hair & nails on a monthly basis in lieu of paying utilities.”

(reproduced as written)

The Landlord attached an affidavit attesting that her hair had not been dyed for five to six months prior to March 28, 2012, when the affiant did her hair.

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 which is before the Dispute Resolution Officer;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

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, 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.

The Tenant provided the following statement in her documentary evidence: “On occasion I will cut my Children’s hair, including Mary’s hair which she offered to pay my bills in exchange for doing her hair and nails every month.” The Landlord was aware that the Tenant was making this argument before the Hearing took place and could have taken steps to secure additional documentary evidence in support of her position that the Tenant did not perform services in exchange for utility payments.

I dismiss the Landlord’s Application for Review on the grounds of new and relevant evidence because the evidence provided by the Landlord is not “new” evidence. 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” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in an arbitration hearing.

Regarding an allegation of fraud

The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, **which were not known to the applicant at the time of the Hearing**, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the Decision or Order was obtained by fraud. The burden of proving this issue is on the person applying for the Review.

Under this ground, under the instruction to list “Which information submitted for the initial hearing was false and what information would have been true?”, the Landlord submits that the Tenant made fraudulent statements that she knew were false. The Landlord attached a list of 14 statements that the Tenant had made during the Hearing and included a synopsis of her answers to those statements. The submissions of both parties were considered by the Dispute Resolution Officer in the Analysis portion of the Decision. The Dispute Resolution Officer made findings on the balance of probabilities with respect to the submissions of both parties. An Application for Review Consideration is not an opportunity to reargue the case.

I find that the Landlord’s application does not disclose sufficient evidence that the Decision and Order were obtained by fraud and therefore I dismiss her application.

The original Decision and Orders dated March 14, 2012, are therefore 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: April 23, 2012

Residential Tenancy Branch