



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

This is an application filed by the landlord on May 9, 2012 for review of a Dispute Resolution Officer decision and order dated April 26, 2012.

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 landlord relies on the second and third grounds; new and relevant evidence, and evidence obtained by fraud.

Facts and Analysis

The landlord states that his lawyer spoke with counsel for the tenant and obtained new information that was not available at the time of the original hearing, and that the landlord was not given an opportunity to present evidence despite a request to do so.

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.

The landlord did not itemize the new and relevant evidence, and did not provide an explanation as to why it was not available at the time of the original hearing. I find that the landlord failed to establish that criteria for new and relevant evidence.

A request for review is granted only on the three grounds stated above. This process does not provide an opportunity to make submissions concerning a breach of the rules of procedural fairness.

The landlord also states in part that counsel for the tenant did not receive he did not receive the landlord's money, nor that he was permitted to deliver the money. The landlord asserts that the tenant's money was delivered to the tenant's law firm to ensure proper care and delivery; that as lawyer with the law firm the tenant's counsel was in regular contact with his principles; and that the tenant's lawyer did not inform the landlord that he had left the firm until asked by the landlord's lawyer at the hearing. The landlord states his lawyer knew that he had been entrusted and failed to deliver money to the tenant as instructed, and that the tenant was not aware of this. The landlord states that the tenant's counsel gave false, misleading information that was intended to confound the tribunal and to smother the landlord's efforts to pay the tenant.

Concerning fraud the guideline states in part:

“A party who is applying for review on the basis that the dispute resolution officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the dispute resolution officer, and that the evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new 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 was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the dispute resolution officer finds that the applicant has met this burden, then the review will be granted.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the arbitrator. A review hearing will likely not be granted where an arbitrator prefers the evidence of the other side over the evidence of the party applying.”

The review process is not an opportunity to re-argue the case. The tenant did not provide new material facts to support that evidence was obtained by fraud. The submission of additional evidence that could have been provided during the original hearing does not, in itself, warrant a new hearing or setting aside the decision. The landlord has not provided new evidence to establish any of the two grounds to grant a new hearing.

Section 81 of the Act provides in part that the director may dismiss or refuse to consider an application for review if the application does not disclose sufficient evidence of a ground for the review.

Decision

For the reasons stated above I dismiss the landlord's application for review consideration.

The decision made on April 26, 2012 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: May 14, 2012.

Residential Tenancy Branch