



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNR OPR

Introduction

The Decision/Order under review is a decision on the Landlord's application for an Order of Possession and Monetary Order for unpaid rent for May, 2012, and loss of revenue for June, 2012. The Landlord's application was granted.

The Tenants submit that they received the Orders on June 7, 2012, by xpress post and the Decision on June 8, 2012, by regular mail.

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 Tenants apply for review on the second and third ground set out above.

Issues

Do the Tenants have new and relevant evidence that was not available at the time of the original Hearing?

Do the Tenants have evidence that the Director's decision or order was obtained by fraud?

Facts and Analysis

The Tenants provided the following copies of documents in support of their Application for Review Consideration:

- an untitled and undated document (Although the document is undated, it makes reference to the year being 2011);
- copies of e-mails dated March 21, 2006, June 8, 2011 and June 4, 2012;
- copy of an invoice from British Columbia Ambulance Service dated May 18, 2012;
- a decision of an investigation officer dated December 16, 2011, regarding the male Tenant's complaint under the Workers Compensation Act, together with his 8 page submission to WorkSafeBC dated May 9, 2012.

Do the Tenants have new and relevant evidence that was not available at the time of the original Hearing?

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.

I find that the evidence provided by the Tenants was available at the time of the original arbitration hearing and is neither new nor relevant to the matter that was before the Dispute Resolution Officer at the Hearing. The Hearing dealt with the Landlord's application pursuant to the provisions of Sections 55 and 67 of the Act for Orders arising from **unpaid rent** and therefore I find that the evidence provided by the Tenants in their Application for Review would not have had a material effect on the decision of the Dispute Resolution Officer. The Tenants remain at liberty to file an Application for damages against the Landlord should they so desire.

Do the Tenants have evidence that the Director's decision or order was obtained by 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.

I find that the Tenants' application does not disclose sufficient **new** evidence that the Decision and Order were obtained by fraud. **The Review Application process is not an opportunity to re-argue the case.**

Overall, I find that the Application for Review Consideration does not disclose sufficient evidence of a ground for review, nor does the Application disclose any basis upon which, even if the submissions in the Application were accepted, the Decision or Monetary Order of the Dispute Resolution Officer should be set aside or varied. The original Decision and Orders dated June 5, 2012, and amended June 6, 2012, are therefore confirmed.

Conclusion

The Tenants' Application for Review Consideration is dismissed.

The original Decision and Orders dated June 5, 2012, and amended June 6, 2012, are 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: June 18, 2012

Residential Tenancy Branch