



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

On June 21, 2012, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. The landlord had applied for a monetary order for damage to the unit, for unpaid rent and for the filing fee. The tenant had applied for a monetary order for the return of double the security deposit. Both parties attended the hearing. The Dispute Resolution Officer granted portions of the applications of both parties which resulted in a net monetary award to the landlord. 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 section 79(2)(b) of the *Residential Tenancy Act* (the "Act") which 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

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

Facts and Analysis

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

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 an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration 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.

I note that in her application for review, the applicant has listed evidence as follows:

1. Hand written statement
2. Copies of RCMP business cards with police file numbers
3. Copy of her notice to end the tenancy
4. Copy of her forwarding address
5. Copy of a bank statement dated June 30, 2007
6. Notice to end tenancy from landlord at previous residence
7. Other documents related to previous tenancy.

In her application for review the tenant states *“said that couldn’t see how my bank statement showed that I paid last months rent March 2012. He couldn’t see the connection June 2007 pd rent for July 2007”*

The tenant states in her handwritten statement that the landlord should not have been awarded rent for the last month of tenancy, as her bank statement from 2007 will show that rent for the last month of tenancy was paid

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence. All the evidence listed above was in existence at the time of the hearing.

With respect to the matter regarding the payment of rent for the last month of tenancy, it was not a matter unknown to the tenant at the time of the hearing. The tenant may disagree with the Dispute Resolution Officer’s findings of fact, but the tenant had an opportunity to respond to the landlord’s evidence at the hearing.

I find that the tenant has not submitted any new evidence and therefore has failed to meet the criteria of the test to establish grounds for review in this tribunal and 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.

Decision

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.

The original decision made on June 21, 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: July 04, 2012.

Residential Tenancy Branch