



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR

Introduction

On June 15, 2012, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application for monetary orders. The Dispute Resolution Officer awarded the tenant a monetary order in the amount of \$1,525.00. The landlord 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 landlord 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.

In her application for review, the landlord states that during the hearing her rights were violated under the "Privacy Protection Act" on two or more occasions. The landlord has filed a copy of the Personal Information Protection Private Sector Privacy Legislation with hand written notes explaining how the principles related to her case.

The landlord states that the decision awarding the tenant a monetary order produced hardship and suffering and that the fact that the tenant's rent is paid by BC Housing was not disclosed by the tenant, during the hearing. The landlord has attached copies of letters from the tenant dated May 14, 2011 and October 06, 2011 in which the tenant refers to BC Housing procedure.

In her statement attached to the application for review, the landlord summarizes stating that the new evidence consists of:

- a) *Privacy – Rights Violated*
- b) *Hardship*
- c) *Tenant receives her rent monies from B.C. Housing Assistance*

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 all the evidence listed above was in existence at the time of the hearing. The landlord states that the Dispute Resolution Officer decided that the landlord was entitled to rent for the first four days of May, but failed to include it in the calculation of the monetary award. The landlord is at liberty to apply for a correction to the amount of the monetary award. An alleged miscalculation is not grounds for a review 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 also 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 26, 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 06, 2012.

Residential Tenancy Branch