



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND O

Introduction

The Landlord applies for a review of the decision on the basis that there is new and relevant evidence.

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

Is the Landlord entitled to a review Hearing?

Facts and Analysis

The Landlord submits that new evidence has been obtained in relation to the mitigation efforts of the Landlord. The Landlord submits that as email evidence of advertising had been deleted prior to the Hearing the Landlord was unable to provide evidence of mitigation. The Landlord provided copies of emails between prospective tenants and the Landlord from an online rental advertising site, dated May 14 and 15, 2012. It is noted that the Decision records the Landlord as stating at the Hearing that no advertising was carried out.

New and relevant evidence that may be accepted for the purposes of a review determination only includes evidence that was not available at the time of the Hearing. Although the Landlord states that the evidence offered with this application is new, even if the emails provided with this evidence had been deleted prior to the hearing, given that the Landlord was able to retrieve this data, I find that this is not evidence and was available at the time of the Hearing. The Landlord had sufficient time to retrieve this data in advance of the Hearing and as this data was retrieved, it is clear that the data was not lost and therefore unavailable for the Hearing. Further, even if the evidence submitted with this application were determined to be not available at the time of the Hearing, I note that the Landlord gave evidence at the hearing that no advertising took place at all. The submission of the Landlord for this review application contradicts the evidence of the Landlord given at the hearing and therefore raises an issue of credibility. As a result, I find that the Landlord has not met the requirements for a review Hearing and I dismiss the application.

Decision

The application is dismissed. The decision made on July 30, 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: August 27, 2012.

Residential Tenancy Branch