



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC O

Introduction

On August 30, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for an order to cancel the notice to end tenancy. Both parties attended the hearing and reached a mutual settlement. As per the settlement the landlord was granted an order of possession. 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.

Although the applicant applied for an extension of time in which to file for review, because he applied within two days of receiving the decision, I find that an extension of time is unnecessary as he cannot be said to have filed beyond the statutorily prescribed timeframe which is based on receipt of the decision or order.

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 his application for review, the applicant has listed evidence in the form of a hand written account of events starting December 31, 2010. The last event described in this narrative occurred on August 22, 2012. The hearing was held on August 30, 2012 by conference call.

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 filed by the tenant with his application for review, was regarding events that had already taken place prior to the time of the hearing and therefore the tenant had an opportunity to testify about these events at the hearing.

In addition, the parties resolved their dispute by reaching a mutual agreement to end the tenancy on September 30, 2012 and acknowledged their understanding that the settlement resolved the matters contained in the tenant's application.

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 change a settlement that was arrived at by mutual agreement 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.

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 August 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: September 28, 2012.

Residential Tenancy Branch