



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

### Introduction

The Decision/Order under review is a decision on the cross applications. The Tenant had applied to cancel a Notice to End Tenancy for Unpaid Rent; for a Monetary Order for the cost of emergency repairs; and for compensation for damage or loss under the Act, regulations or tenancy agreement. The Landlord had applied for an Order of Possession; a Monetary Order for unpaid rent; and to recover the cost of the filing fee from the Tenant.

The September 12, 2012 Decision made the following findings and orders:

- the Landlord's application for an Order of Possession was dismissed;
- the Tenant's application to cancel the Notice to End Tenancy was allowed;
- the Tenant's application for the cost of emergency repairs was dismissed without leave to reapply;
- the Tenant was awarded a total of \$362.77 in compensation for damage or loss;
- the Landlord was awarded \$1,600.00 for unpaid rent for September, 2012;
- the Tenant's monetary award was set off against the Landlord's award, resulting in a Monetary Order against the Tenant in the amount of \$1,237.23.

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 Tenant is applying for review on the second ground set out above.

### Issues

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

### **Facts and Analysis**

In her Application for Review Consideration, the Tenant indicates:

“ITEM: Adirondack chair value listed on the Monetary worksheet. WHY it was not available at the hearing is because there wasn’t an actual receipt as it was a gift. HOW: With the sworn affidavit the officer can now establish element 3. “The amount of such damage or loss”, which was the only part missing to satisfy the 4-part test for damages as seen on Page 6 of the Decision.

ITEM: RUG receipt. WHY it was not available at the hearing is because I had to go to my storage to find it (and with most items on the list I failed to realize the originals were required) HOW: With the original receipt the officer can now establish element 3. “The amount of such damage or loss”, which was the only part missing to satisfy the 4-part test for damages as seen on Page 6 of the Decision.”

(reproduced as written)

The Tenant attached the following documents to her Application for Review Consideration:

- Notarized letter dated September 17, 2012; and
- Receipt dated 06/20/10.

### **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 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.

It is up to a party to prepare for a Dispute Resolution Hearing as fully as possible. Parties should collect and supply all relevant evidence at the Hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a Hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence.

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.

"New" evidence includes evidence that has come into existence since the Dispute Resolution Hearing. It also includes evidence which the applicant could not have discovered with due diligence before the Hearing. New evidence does not include evidence that could have been obtained before the Hearing took place. Evidence that "would have had a material effect upon the decision of the DRO" is such that if believed it could reasonably, when taken with the other evidence introduced at the Hearing, be expected to have affected the result.

I dismiss the Tenant's Application for Review because I find that the receipt provided by the Tenant in her Application for Review Consideration was available at the time of the original arbitration hearing and the notarized letter could have been obtained before the Hearing took place. Therefore, neither of the documents are new evidence as defined above.

The original Decision and Orders dated September 12, 2012 are therefore confirmed.

### **Conclusion**

The Tenant's Application for Review Consideration is dismissed.

The original Decision and Orders dated September 12, 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: September 26, 2012

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Residential Tenancy Branch