



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on January 2, 2013 (the original decision), with respect to an application for dispute resolution from the landlord.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;

Issues

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 tenant applied for a review on all three of the grounds outlined above and also requested an extension of time to make her application. As the tenant received the landlord's decision and order on January 8, 2013, her January 10, 2013 application for review was within the two-day period for applying for a review. As such, no extension of time was required. I am able to consider her application for a review.

Facts and Analysis - Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In her application for review, the tenant explained that she was not invited to dispute the landlord's 10 Day Notice "because of holidays + weekends for which I was not in the area nor was I thinking these said days would be counted in the 5." She also noted that she had submitted her own application for dispute resolution, which is to be heard on January 28, 2013. Her application included a request for more time to apply to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of December 18, 2012 and cancellation of that Notice.

The application for review also requires an applicant to identify the testimony or additional evidence that the applicant would have provided had she been able to participate in the original hearing. She responded as follows:

All evidence of events from start of tenancy in September onward to the dispute now in December – Jan.

- *Reciepts 4 emerg. Repairs to cover december rent.*
- *Fees for cleaning/repair services neceisary at start of tenancy.*
- *(as in original)*

She also provided the Residential Tenancy Branch (the RTB) with:

- 30 unopened envelopes to many different individuals at her mailing address;
- a vast selection of unmarked receipts, many of which were damaged or torn; and
- what appears to be her plastic identification bracelet issued by an unnamed hospital.

The meaning of this "evidence" was totally unclear. Other than the above-noted scant reference, the tenant provided no explanation as to why she believed these documents supported her application for a review of the original decision.

In considering, the tenant's application for review, I first note that the original direct request decision was considered by way of an *ex parte* hearing on January 2, 2013. In

accordance with Residential Tenancy Branch policy, there was no participatory hearing scheduled at which the tenant could have attended. By the January 1, 2013 date that the tenant was served notice of the direct request proceeding, I find that the tenant's five-day time period for disputing the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) had expired. Although the tenant did apply for dispute resolution to seek a cancellation of the 10 Day Notice on January 2, 2013, this application was submitted on the same date that the original decision was made by the Arbitrator.

As the direct request process does not provide a participatory hearing, I find that the tenant has not disclosed sufficient evidence of a ground for review on the basis that she was unable to attend the hearing scheduled for consideration of the landlord's direct request application for dispute resolution. I also dismiss her application on the basis that her application does not give full particulars of the evidence on which the applicant intended to rely. For these reasons, I dismiss the tenant's application for review on the basis that she was unable to attend the original 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 original dispute resolution hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the DRO;
- the evidence is credible; and
- the evidence would have had a material effect on the decision of the DRO.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

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 is evidence that has come into existence since the hearing. It 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 is "relevant" if it relates to the matter at hand, or tends to prove or disprove an alleged fact. Evidence that "would have had a material effect

upon the decision of the Arbitrator” 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.

The tenant’s sole response to the request to “list each item of new and relevant evidence and state why it was not available at the time the hearing and how it is relevant” was “All.”

I dismiss the tenant’s application for review on this ground as I find that the tenant’s application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely. The pile of unsorted documents she left at the RTB Office on January 10, 2013 without any summary or explanation does not satisfy the requirements of meeting this ground for seeking a review of the original decision.

Facts and Analysis - Decision Obtained by Fraud

This ground applies where a party has evidence that the Arbitrator’s decision was obtained by fraud. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Arbitrator’s decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator, and that the evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

In this portion of the application for review form, the applicant is asked to answer the following two questions:

How did the person who submitted the information know it as false?

How do you think the false information was used to get the desired outcome?

To both questions, the tenant responded “Yes.”

The tenant's application for review is unclear in that it appears to address comments attributed to the landlord and/or the landlord's son which involve issues such as plumbing, heating, electrical, health and safety and laundry. While these issues may involve the tenant's subsequent application for dispute resolution, they do not address the landlord's application for a monetary award for unpaid rent the landlord claimed was owing for December 2012. As with the rest of the tenant's application, I dismiss the tenant's application because she has not given full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely. I also dismiss the tenant's application for this ground on the basis that she has not identified sufficient evidence of a ground for review.

In addition to the reasons outlined above for dismissing the tenant's application for review, I also find that overall her application discloses no basis on which, even if the submission in the application were accepted, the original decision and order of the Arbitrator should be set aside or varied. The original decision is confirmed.

Decision

The decision made on January 2, 2013 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: January 14, 2013