



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## APPLICATION for REVIEW

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.*

On February 04, 2012, the Residential Tenancy Branch received an Application for Review from Tenants.

Subject:

Decision dated: February 14, 2013  
Rental Unit:

Other Party: HUME INVESTMENTS, Landlords,

### **Introduction**

On February 01, 2013 a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and for a monetary order for unpaid rent and compensation for damage or loss. The Arbitrator granted the landlord's application. 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.

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 Arbitrator,
- 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 attached a letter dated January 15, 2013, written by the resident manager to Social Services. The letter gives the tenant permission to reside in the rental unit until January 31, 2013. The tenant also states that he has a neighbour who will vouch for him about “original noise complaints”

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. The evidence attached to the application is dated January 15, 2013 and the hearing was conducted on February 01, 2013. The tenant had adequate time to file this letter into evidence. In addition, it was not a matter unknown to the tenant at the time of the hearing. The tenant had the opportunity to provide verbal testimony regarding this letter that he states is new evidence.

The Arbitrator made her decision based on section 47(5) of the *Residential Tenancy Act*. The tenant did not apply to dispute the notice to end tenancy and therefore under

this section, he was conclusively presumed to have accepted that the tenancy ended on the effective vacancy date of the notice. Even if I accept the letter that the tenant has attached to his application for review, as new evidence, I find that this letter would not change the decision.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. 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 Arbitrator 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 applicant is 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 February 01, 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: February 14, 2013