



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes      FF MND MNSD

### Introduction

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 not available at the time of the hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

(my emphasis)

The landlord has submitted a Request for Review consideration in which she was alleging that a Review was warranted based on the ground that new and relevant evidence has come to light that was not available at the time of the original hearing.

### Issues

Is there new relevant evidence that did not exist or could not be obtained prior to the hearing that would have changed the decision?

### Facts and Analysis

On October 12, 2012 the landlord had filed an application for a Dispute Resolution hearing seeking a monetary order. The original hearing was scheduled and heard on January 11, 2013 and the decision was issued on January 14, 2013.

The landlord has now requested review consideration of the above decision in which the landlord was not successful in obtaining a monetary order.

In support of the application for Review Consideration, the landlord submitted additional evidence including the following:

- a copy of the application for review consideration
- a copy of the dispute resolution decision dated January 14, 2013
- a written statement from the landlord
- a statement from a carpeting company
- 2 statements about the carpet damage from witnesses
- a photograph of the carpet damage
- a swatch/sample of some carpet material
- a copy of a receipt from a carpet cleaning company for services booked on June 3, 2011
- a copy of email sent from a cleaning company confirming cleaning services to the main floor of a home on October 23, 2012
- copies of receipts and cheques
- an affidavit from the landlord's agent signed on January 24, 2013

In the Application for Review Consideration of that decision, the landlord indicated that the above evidence was not available at the time she applied and it would have changed the outcome

The landlord's application for Review Consideration contained written arguments by the landlord with respect to the dispute resolution officer's decision. The landlord has clearly taken issue with findings and conclusions contained in the hearing decision. On the Application for Review Consideration form the landlord supplied additional written testimony in the space titled:

*“NEW AND RELEVANT EVIDENCE” “List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant.”*

The landlord's written data in this space on the application briefly listed the additional evidence that was attached to the Application for Review Consideration.

The landlord did not give any details about the reasons why this evidence was not available at the time of the hearing, nor any explanation why the evidence was not submitted prior to the January 11, 2013 hearing.

### **Analysis**

The burden of proof is on the Applicant to prove that the criteria for a re-hearing has been met under section 79(2) of the Act, which provides that a decision or order of the director may be reviewed only on one or more of the grounds listed in the Introduction section of this decision.

In regard to new and relevant evidence, *Residential Tenancy Policy* 24 states in part that 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, that is new and relevant to the matter which is before the dispute resolution officer. Only when the applicant's evidence meets the above criteria, will a review be granted on this ground.

I find that the landlord was required to provide all of the relevant evidence that was being relied upon, before the proceeding held on January 11, 2013.

It is incumbent upon the person making an application to submit and present all relevant supporting evidence to meet their burden of proof during the hearing. In determining whether or not there is new and relevant evidence, I find that evidence which was in existence at the time of the original application, and was not presented by the applicant, is not considered to be "*new evidence*" on this ground.

In this instance, I find that the landlord's evidence contained in the Application for Review Consideration merely clarified and restated existing data that was, or should have been, available to the applicant prior to the hearing and should have been obtained and submitted prior to the hearing held on January 11, 2013.

Given the above, I find that the landlord has not succeeded in providing any new and relevant evidence that could not have been obtained through due diligence prior to the original application. I find that the basis of the Application for Review Consideration was not sufficiently proven to support a Review.

### **Decision**

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient evidence to validly support any grounds for a review. I find that the Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria as new and relevant evidence for granting a review under the ground cited.

Therefore, I hereby dismiss the landlord's Application for Review Consideration without leave and order that the decision rendered on January 14, 2013 still 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 30, 2013

A handwritten signature in black ink, appearing to read 'J. Yuen', written over a horizontal line.

J. Yuen, Arbitrator  
Residential Tenancy Branch