



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC LRE MT

This is an application by the tenant for a review of a decision rendered by an Arbitrator on February 5, 2013.

The *Residential Tenancy Act* provides for a review of an Arbitrator's decision if:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her 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 Arbitrator's decision was obtained by fraud.

The Applicant is applying for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing.

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

- the issues raised can be dealt with under the provisions of the Legislation that allow an Arbitrator to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or 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 Officer should be set aside or varied;
- the application is frivolous or an abuse of process;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

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 Arbitrator;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator

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" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in an arbitration hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be 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 arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

Evidence is "relevant" that relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact.

Evidence is "credible" if it is reasonably capable of belief.

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.

A mere suspicion of fresh evidence is not sufficient.

FINDINGS

New Evidence

The Decision under review is a decision made in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for cause and seeking more time to make that application. The tenant's application was dismissed without leave to reapply and an Order of Possession was issued effective 2 days after service. Both the tenant and the landlord attended the hearing.

The tenant now applies for review. In response to the instruction to "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 applicant states:

Grandfather (who raised me dying) auntie also dying I was there all the time, holiday time, court case with ex, I was unable to respond to the eviction notice. Paid rent for February 1st, gave landlord rent on 2nd of February 2013.

(reproduced as written)

I find that the application does not meet the five criteria required to allow me to grant a Review. Specifically the applicant has failed to supply sufficient evidence to show that the evidence is new as defined above.

Overall the application does not disclose sufficient evidence of a ground for review, it does not include full particulars nor does it disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

The original decision is therefore 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: February 21, 2013

Residential Tenancy Branch