



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR

This is an application by the landlord for a review of a decision rendered by an Arbitrator on February 14, 2013.

In this matter, the Applicant applies for review pursuant to Section 79 of the *Residential Tenancy Act*, on the following grounds:

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

Policy - 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 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.

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

FINDINGS

The Decision under review was a record of settlement made between the parties. In that record the parties agreed that the tenancy would end on February 28, 2013, the landlord would be issued an Order of Possession effective on February 28, 2013 and the landlord would retain the tenant’s security deposit of \$162.50.

The tenant now applies for review stating:

I had a 6 month lease dating Nov. 1/12-April 30/13, also the Arbitrator listened to very little of the evidence.

I find that the application for review does not meet the five criteria set out above that would allow me to order a review in this matter based on “new and relevant evidence”. In particular I find that:

- There is insufficient evidence to support a finding that the evidence now submitted was not available at the time of the original arbitration hearing;
- There is insufficient evidence to support a finding that it is new; and

Further, the Decision issued is based on an agreement made between the parties at the hearing of this matter.

Overall I find that the application for review does not disclose sufficient evidence of a ground for review.

The original decision under review here 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 28, 2013

Residential Tenancy Branch



Residential Tenancy Branch

RTB-136

Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca