



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR 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 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 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 and that the dispute resolution officer's decision was obtained by fraud.

Preliminary Matter-Request for Extension of Time to Apply

The landlord has requested an extension of time to apply for the review consideration.

Section 80(c) of the Act requires that the party must make their application for review within 15 days after a copy of the decision or order has been received by the party, when the matter that is the subject of a Request for Review Consideration, relates to an application for monetary compensation,

In this instance, I find that the landlord received the dispute resolution decision on January 18, 2013 and made the application for Review Consideration on February 28, 2013. In order to comply with the Act and meet the 15-day deadline, I find that the application should have been made before February 4, 2013. I find that the landlord did not make the application seeking Review Consideration until 41 days after the dispute resolution decision was received.

Given the above, I find that the landlord's application was submitted beyond the statutory 15-day deadline under the Act.

However, the landlord has requested that the application deadline be extended on the basis that:

"I seek a Review on the basis of fraud and that evidence could not have been available until I knew of the fraud. At the original hearing, (the tenant) gave untrue sworn evidence, ... Since that time the tenants brought a further application to the RTB.... It was only in response to that Application that we had reason to contact the insurance adjuster, who denied everything the tenant alleged he said." (Reproduced as written)

Section 66 of the Act does permit a Dispute Resolution Officer to grant an extension in exceptional circumstances. What may constitute "*exceptional circumstances*" is discussed in the Residential Tenancy Policy Guideline, where it indicates that the word "*exceptional*" means that an ordinary reason given by a party for not complying with a time limit, will not suffice to allow an arbitrator to extend that time limit.

The word "*exceptional*" implies that the reason for failing to do something within the time required is very strong and compelling and this is supported by higher Court decisions one of which noted, that "*a 'reason' without any force of persuasion is merely an excuse. Thus, the party putting forward said 'reason' must have some persuasive evidence to support the truthfulness of what is said.*"

I find that the reason for the delay provided by the landlord was that they had only recently discovered that some of the verbal testimony provided by the tenant concerning an opinion he allegedly received from the insurance adjuster, was confirmed to be untrue. The landlord apparently had occasion to contact the adjuster and this third party supplied a written statement to this effect to the landlord.

I accept the landlord's evidence. However, I find that extending the deadline to Request a Review for the purpose of admitting newly discovered confirmation from a third party alleging that the respondent's verbal hearing testimony was incorrect or misleading, would not likely be considered as a particularly exceptional circumstance. That being said, I will give the benefit of doubt to the applicant in granting their request for an extension. Accordingly, I will consider the merits of the landlord's request for review consideration.

Issues

The issues to be decided are as follows:

- Has the landlord proven that there is new and relevant evidence that did not exist or could not be obtained through due diligence prior to the hearing date?

- Has the landlord proven that a fraud was committed that affected the hearing decision?

The burden of proof is on the Applicant to prove the criteria for a review of the decision or order has been met under the Act.

Facts and Analysis

New and Relevant Evidence

One of the grounds upon which the landlord has based the Request for Review Consideration, is that there is new and relevant evidence that was not available at the time of the original hearing.

With respect to the issue of whether the evidence provided in the Request for Review Consideration is new, I find that the landlord's ability to refute the tenant's testimony about data he received from the insurance adjuster was limited during the hearing, by the fact that they did not know in advance that the tenant would be adducing such verbal evidence. In this regard, I find that the additional evidence furnished by the landlord would technically qualify as "new" evidence that was not available at the time of the original hearing.

However, I find that, in addition to being new evidence, the applicant must also prove that it is relevant evidence. In this regard, I find that the disputed testimony, given by the tenant during the hearing, was not a deciding factor in the arbitrator's decision. I find that the issue under dispute that was before the arbitrator pertained to the landlord's ability to prove the merit of their monetary claim, not the tenant's perspective.

I find that, any position taken by the respondent reflecting an opinion he received from a third party, such as the insurance adjuster, would not hold substantial evidentiary weight, on the question of whether or not the landlord had sufficiently met its burden of proof to support their monetary claim.

I find that the impugned evidence merely consisted of nothing more than a verbal statement, about an alleged verbal communication from a third party, who did not appear at the hearing as a valid witness. Moreover, this third-party opinion reported as "evidence", even if accepted as fact, would not constitute a relevant factor used by an arbitrator in interpreting the applicable sections of the Act, nor in assessing the weight of the landlord's evidence.

For this reason, I find that no review is warranted on the claimed ground of new and relevant evidence.

Fraud

Although the landlord believes that providing inaccurate testimony at the hearing, qualifies as fraud, I find that, even when one party can disprove the other party's version of the truth, this does not automatically make it a case of fraud.

It is a principle of natural justice that each party in a dispute is always at liberty to provide testimony as they see it and advocate his or her individual perspective, regardless of whether the testimony is determined by the other party to be accurate or completely wrong.

Moreover, I find that, even if the verbal statements in question were accepted as being fraudulent, the landlord still must establish that the false evidence affected the outcome of the hearing. In this regard, I find that a respondent's second-hand verbal testimony about an opinion allegedly expressed to him by a third-party about the respondent/tenant's rights, whether true or not, did not have an influence on the outcome of the hearing held on November 21, 2012 and January 4, 2013. The issue determined at the original hearing was whether the landlord had sufficiently proven the landlord's monetary claim.

Given the above, I find that the landlord's position that the arbitrator's decision was obtained by fraud, was not sufficiently supported by the evidence provided. Therefore, I am unable to find this to be a valid ground upon which to justify a review.

Section 81(1) of the Act states that the arbitrator may dismiss or refuse to consider the application, if the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, if the application does not disclose sufficient evidence of a ground for the review, if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator should be set aside or varied, or if the application is frivolous or an abuse of process.

Pursuant to Section 81(b) (ii) of the Residential Tenancy Act, I must dismiss the application for review on the basis that it does not disclose sufficient ground for a review.

The applicant has not succeeded in demonstrating that the evidence contained in this application would meet the criteria for granting a review under the grounds cited. There is no basis to claim that new and relevant evidence exists and I hereby dismiss this application without leave.

Therefore the hearing decision rendered on January 11, 2013, still stands.

CONCLUSION

The landlord's request for a Review is not successful and the application is dismissed without leave.

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: March 12, 2013

Residential Tenancy Branch