



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNL MNDC MT

### Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on April 10, 2013 (the original decision). The original decision considered applications for dispute resolution from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following 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 should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

### Issues

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 tenant applied for review on the basis that he maintained he had new and relevant evidence that was not available at the time of the hearing, the second of the grounds outlined above.

The tenant also applied for an extension of time to apply for review. He noted that he received the decision on April 23, 2013, and filed his application for review two days later on April 25, 2013. As the Residential Tenancy Branch (the RTB) received the tenant's application for review within the two-day time period required, I find that the tenant's application was filed on time and there is no need to consider his request for an extension of time to file his application.

#### 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 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 a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing.

“Evidence” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into 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 dispute resolution 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 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.

The tenant provided the following explanation in the Application for Review form in response to the direction 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.”

*I would like to dispute the Mutal Agreement to end tenancy as I do not recall signing the Agreement. As per order of Arbitrator, he compared the signs on Agreement himself without taking...*

(as in original)

As the tenant did not have enough space in this section of the Application for Review form to complete his submission, he attached additional information in a separate document which continued from the above section as follows:

*advantage of any Forensic lab. I don't think that arbitrator is qualified to give an opinion on Forensic Science. I have memory loss issues and would like to send this agreement for sign comparison by an Expert...*

(as in original)

The tenant added that he did not believe that the landlord had given him a legal notice to end this tenancy and asked for a new hearing before a different Arbitrator. The tenant also stated that he had no evidence to prove his memory loss at this time, but knows that he would not have signed the Mutual Agreement to End a Tenancy Agreement (the Agreement).

While I have given the tenant's application careful consideration, I find nothing in his application that would qualify him to obtain a new hearing on the basis of new and relevant evidence. To be successful, his application would need to meet all five of the criteria outlined above in order to be granted leave to obtain a new hearing.

I find that the tenant's application has not met any of the five criteria outlined above. Rather than a request for review on the basis of new and relevant evidence, the tenant has applied for review because he disagrees with the Arbitrator's weighing of the evidence with respect to the landlord's claim that the tenant signed the Agreement. The following excerpts from the Arbitrator's decision reveal that she was clearly aware of the conflicting evidence with respect to whether or not the tenant actually signed the Agreement.

*...On January 11, 2013 the parties signed a Mutual Agreement to End a Tenancy which was submitted in evidence...*

*The tenant says he does remember some papers but does not remember whether he signed the Mutual Agreement to End Tenancy. He says that his health is poor and his memory is poor and he needs more time to move out.*

*The landlord responded that the tenant definitely signed the Mutual Agreement to end this tenancy. The landlord submits that he had a witness with him at the time and also that if one compares the tenant's signature on the Mutual Agreement with those shown on the other documents filed in evidence one can easily determine that it is the tenant's signature...*

In the Analysis portion of the original decision, the Arbitrator provided the following explanation for her consideration of this portion of the evidence before her.

*...I have compared the tenant's signature as shown in the Mutual Agreement to End a Tenancy with his signature shown in the Contract of Purchase and Sale, the Property Condition Disclosure Statement and the Removal of Subject to Clause and they are clearly the same. Further, if the tenant did not sign the Mutual Agreement to End Tenancy and as the parties agree that no Notices to End Tenancy were served, why did the tenant think that the tenancy was ending such that he found it necessary to make an application seeking more time and seeking to cancel a notice? I find it is reasonable and probable to find that he made that application actually seeking to cancel the Mutual Agreement to End a Tenancy that he signed. I find that the Mutual Agreement to End this tenancy was signed on January 11, 2013...*

The tenant has questioned the expertise of the Arbitrator to make a finding as to the authenticity of the tenant's signature on the Agreement. However, the tenant has not submitted any evidence from anyone with the type of "forensic" expertise that the tenant views as necessary to make a determination regarding the authenticity of the tenant's signature on the Agreement. He also does not dispute the Arbitrator's report that the tenant testified at the hearing that his memory is poor. In fact, on this point, he noted that he experiences major losses in memory.

My role in considering the tenant's application does not extend to an assessment of whether or not I believe that the Arbitrator was correct in her weighing of the evidence before her with respect to the signature on the Agreement. However, I do confirm that the Arbitrator had written evidence of the signature on that document as well as the three other documents cited in her decision upon which to base her decision.

While I am sympathetic to the difficulties that the tenant faces with memory loss, an application for a review cannot be granted if a party simply disagrees with an arbitrator's weighing of the evidence before her. It seems clear from the original decision that the original Arbitrator realized the nature of the disputed evidence regarding the signature

on the Agreement entered into written evidence. I find the tenant's is not new evidence but is an attempt to re-argue the same matters that were before the Arbitrator at the original hearing. I find that the tenant's evidence submitted by the tenant as "new and relevant" is neither and appears to be a reiteration of his claim that he does believe he would have signed the Agreement, although he admits that his memory is poor. With no supporting evidence, the tenant essentially maintains that the Arbitrator should not have reached the conclusion she reached in considering the written evidence before her in rendering her final and binding decision of April 10, 2013.

I dismiss the tenant's application for review on the basis that his application discloses insufficient evidence of any ground for review. The original decision and Order is therefore confirmed.

#### Decision

The decision and Order made on April 10, 2013 stand.

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: April 26, 2013

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Residential Tenancy Branch