



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR FF MNDC

Introduction

This is an application by the landlord for a review of a decision rendered by an Arbitrator on May 16, 2013 (the original decision). The original decision considered an application for dispute resolution from the tenant pursuant to the *Residential Tenancy Act* (the *Act*) for the cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), a monetary award for losses or damage arising out of this tenancy, and to recover the tenant's filing fee from the landlord. At the same hearing, the landlord's cross-application for an Order of Possession for unpaid rent, rent owing from April 2013, losses and damage arising out of this tenancy, authorization to retain the tenant's security deposit and a request to recover the landlord's filing fee were also before the Arbitrator.

As reported in the original decision, the parties agreed to settle the issues then in dispute between them on the basis of the following terms:

At the hearing, a comprehensive settlement was reached with respect to all claims as between these parties.

Settlement:

It was agreed by both parties that:

- 1. The landlord shall immediately pay to the tenant the sum of \$408.19.*
- 2. This settlement is made in full and final satisfaction of all claims by both parties against the other...*

To give effect to their settlement agreement, the Arbitrator issued a monetary Order in the tenant's favour in the amount of \$408.19 and cancelled the landlord's application (the latter, as per the landlord's wishes).

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 landlord applied for a review of the original decision on the basis of new and relevant evidence that was not available at the time of the original hearing, the second of the grounds set out above.

Facts and Analysis

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 landlord 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.”

*Received via fax from City of New Westminster outstanding utility bill \$219.55
Utility Bill is mailed to tenant directly. (Expected tenant to pay bill.) Called City of
New Westminster on May 21, 2013 to register for new tenant and realized it was
unpaid. (If tenant doesn't pay utility bill it gets transfer to owner's property tax)*

(as in original)

The landlord attached a copy of the utility bill in question faxed to the landlord by the municipality five days after the original hearing. The landlord also attached a copy of the agreement signed by the parties on April 30, 2013, that formed the basis for the settlement agreement reported in the original decision. This summary included the landlord's agreement to withdraw and cancel consideration of the landlord's cross-application for dispute resolution scheduled for the same hearing as the tenant's application.

The landlord's application for review certainly meets some of the five criteria outlined above that would qualify it for a review hearing. However, I find that this new evidence is not relevant to the issues that were before the Arbitrator. The landlord was unaware that the tenant had failed to pay the \$219.55 utility bill to the municipality until five days after the original hearing. I find that this was a new issue that had not been raised in either of the parties' claims. For this reason, I find that this new evidence submitted by the landlord is not relevant to the matter that was before the original Arbitrator. In addition, I note that the Arbitrator simply reported the outcome of the pre-arranged and signed agreement that the parties had undertaken before this hearing occurred. As his decision reported the terms of their settlement agreement and gave legal effect to that agreement, I cannot see how new evidence relating to an issue that was not raised by the parties prior to the original hearing could have had a material effect on the Arbitrator's original decision. While the landlord may not have entered into the settlement agreement had the unpaid utility bill been known to the landlord at the time of the original hearing, the Arbitrator in this case merely reported the terms of the settlement agreement reached between the parties in his decision.

The review process is not designed to enable a party to obtain a second hearing of a matter on the basis of totally new issues that were not in dispute nor part of claims made at the original hearing. In such circumstances, it would seem more appropriate for a party who wishes to launch a totally new type of claim not included in the original

claim for dispute resolution to initiate a new application for dispute resolution. In this case, it would then become necessary for the Arbitrator hearing such a new application to determine, after hearing arguments from both parties, whether or not the landlord's commitment that the settlement reached between the parties constituted a "full and final satisfaction of all claims by both parties against each other" prevented the landlord from pursuing a new claim for a monetary award.

For the reasons outlined above, I dismiss the landlord's application for review as I am not satisfied that the landlord has met all five of the criteria required to obtain a review hearing on the basis of new and relevant evidence. I do so as I do not accept that the landlord's new evidence was relevant to an issue that was before the original Arbitrator, nor did the absence of that evidence affect his reporting of the settlement agreement reached between the parties as presented to him by the parties at the original hearing. I dismiss the landlord's application for review on the basis that this application discloses insufficient evidence of any ground for review. The original decision and Order is therefore confirmed.

Decision

The decision made on May 16, 2013 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: May 30, 2013

Residential Tenancy Branch