



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

This application seeks a Review Hearing of a Hearing held on April 26, 2013 on the landlords' application for liquidated damages after the tenant left the fixed term agreement early. In her decision of April 29, 2013, the arbitrator awarded the landlords \$1,000 as liquidated damages and recovery of their \$50 filing fee.

While it does not impact the present application, I note that the parties had a previous hearing on the tenant's application in which she was awarded return of the security deposit in double under section 38(6) of the *Act*.

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.

Issues

In the present application, the tenant requests a Review Hearing on the grounds that she had new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

The tenancy in question began on May 1, 2012 under a fixed term rental agreement set to end on April 30, 2013; however, the tenant breached the agreement by leaving the tenancy early on September 30, 2012.

In order to qualify for a review hearing on the grounds of new and relevant evidence, the evidence must meet all five of the following criteria: it was not available at the time of the original hearing, it is new, it is relevant, it is credible and it would have had a material effect on the arbitrator.

The tenant has submitted as new and relevant evidence a series of emails between her and the property manager and between her and the landlords. The emails are dated between March 28, 2012 and September 9, 2012, the latest of them nearly eight months before the hearing in question.

I must find that they constitute evidence that is not new, and that would have been available for the original hearing.

Therefore, the application for a Review Hearing is dismissed as the evidence submitted as new and relevant is not new and would have been available at the time of the original hearing.

Decision

This application for a Review Hearing is dismissed.

The decision and order made on April 26, 2013 remain in force and effect.

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 27, 2013

Residential Tenancy Branch