



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: OPE

### Introduction

This is an application by the Applicant/Landlord for a review of a decision rendered by an Arbitrator on April 22, 2013, (the original decision), with respect to an application for dispute resolution from the Applicant/Landlord to obtain an Order of Possession.

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 Dispute Resolution Officer should be set aside or varied;
- the application is frivolous or an abuse of process.;

### 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 Applicant applied for a review on the basis of new and relevant evidence that he claimed was not available at the time of the original hearing, the second of the grounds outlined above.

### Preliminary Observations and Background and Evidence in Original Decision

In the original decision, the Arbitrator noted that the Applicant issued a One Month Notice to End Tenancy for Cause (the 1 Month Notice) to the Respondents on February 21, 2013. However, the application for dispute resolution by the Applicant requested an

Order of Possession as the Respondents' employment with the Applicant/Landlord had ended and for unpaid rent.

The Arbitrator outlined the following Background and Evidence to this application in part as follows:

*... The parties involved are married to each other. The parties separated on August 1, 2011 and are in the process of getting divorced. The tenant has been residing at this location since they couple separated. There is neither a written tenancy agreement nor any monthly rent payable.*

*The landlord gave the following testimony:*

*The landlord stated that the agreement was that the tenant pays the property taxes in lieu of rent... The landlord stated that the tenant built an "illegal wall" in the middle of the living room to house her "gators" and that her son was basically cut off from the house. The landlord also stated the tenant conducted other repairs on the property without obtaining permits for the work. The landlord feels the tenant should be evicted immediately.*

*The tenant gave the following testimony:*

*The tenant stated that she adamantly disputes the claims made by the landlord. The tenant stated the only reason he has filed this matter was because she was awarded child support, and the following day was served with the one month notice. The tenant stated that she owns half of this house and has every right to live there and cannot be evicted. The tenant stated that she was the one who has been paying the back taxes and that she has maintained and upgraded the property. The tenant feels that this matter is best dealt with at the divorce proceedings in the Supreme Court...*

I should first note that there it is little evidence to enable me to determine if the Applicant's original application for dispute resolution falls within the jurisdiction of the Act. Section 4 of the Act reads in part as follows:

**4** *This Act does not apply to...*

*(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,..*

The application for review would seem to indicate that the rental unit in question is a manufactured home, apparently shared by the Applicant and the Respondents, one of whom is his estranged wife. Prior to the marital separation between the Applicant and the female Respondent, the parties presumably shared these accommodations as their marital home. Section 4(c) of the *Act* would exclude this living arrangement from the rights and responsibilities of the *Act* in the event that the Applicant shares bathroom or kitchen facilities with either of the Respondents he has listed in his application.

On the face of it, the possibility of creating separate bathroom and kitchen facilities in a manufactured home shared between the Applicant and the Respondents seems somewhat remote. However, the original decision is silent on these details and the original Arbitrator has issued a final and binding decision to dismiss the landlord's application and set aside his 1 Month Notice.

Despite my reservations as to whether the original application and hence the current application for review falls within the *Act*, I have proceeded to consider the application for review under the presumption that the original Arbitrator decided on the basis of the representations before him that this was a matter that he could consider under the *Act*.

#### 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 dispute resolution hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the DRO;
- the evidence is credible; and
- the evidence would have had a material effect on the decision of the DRO.

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 is evidence that has come into existence since the hearing. It 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" if it relates to the matter at hand, or tends to prove or

disprove an alleged fact. 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.

In the Application for Review Form, the Applicant was asked to list each item of new and relevant evidence and to state why it was not available at the time of the hearing and how it was relevant. In response, the Applicant responded as follows:

*Had to get in printed out. P.I. C.*

*New Bill not Paid.*

*Title of Sole owner of Home*

(as in original)

The Applicant’s new evidence was a copy of an April 10, 2013 Quarterly Utilities Invoice, a May 15, 2013 BC OnLine Manufactured Homes Registry identifying him as the “Sole Owner” of a manufactured home, and a faxed photocopy of a photograph of such poor quality as to add nothing to his application.

I find that the evidence provided by the Applicant and, in particular, his cryptic explanation outlined above is insufficient to obtain a review of the original decision. The documents submitted could have been obtained and supplied to the Arbitrator before the original decision but were not. For example, the Applicant’s explanation that he had to get these documents printed out does not in any way explain why these documents were relevant or why they were not submitted for the original Arbitrator’s consideration. I am also at a loss to understand how this evidence is relevant to the landlord’s original application or the issues before the original Arbitrator. As noted in the original decision, the Applicant applied for dispute resolution seeking an end to this tenancy for unpaid rent, with an admission by the Applicant that no monthly rent was payable, and for an end to employment with the Applicant, when no such employment relationship seems to have been in place. The 1 Month Notice identified totally separate issues.

I also find that the application for review fails to meet any of the five criteria set out above that would allow me to order a review in this matter based on “new and relevant evidence”. The application would have to meet all of the five criteria in order to be successful.

For the reasons outlined above, I dismiss the application for review because I find that it does not give full particulars of the issues submitted for review or of the evidence on which the Applicant intends to rely. I also dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review on the basis of new and relevant evidence. Overall, I also find that 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 original decision is therefore confirmed.

As a final observation, I should note that I have seriously considered taken the unusual step of also dismissing this application for review on the basis of this application being an abuse of process. Given the multitude of other reasons I have outlined above for dismissing this application for review, I am satisfied that there is no need to include this as a further reason to dismiss this application for review. However, I note that the original decision reported that the female tenant, the Applicant's estranged wife, observed that "this matter is best dealt with at the divorce proceedings in the Supreme Court." I agree with this observation and would suggest that the Applicant redirect his energies towards resolving his concerns through mechanisms that would have a more likely prospect of obtaining results than attempting to make use of the *Residential Tenancy Act*, an *Act* that was not designed to resolve disputes of this nature at the end of a marriage.

#### Decision

The decision made on April 22, 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 21, 2013

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Residential Tenancy Branch