



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

The Decision/Order under review is a decision on the Tenants' application for compensation under the provisions of Section 51(2) of the Act. The Tenants' application was granted and the Tenants were provided with a monetary order against the Landlord in the equivalent of two months' rent under the tenancy agreement.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 following 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 applies for review on the second ground set out above.

Issues

Does the Landlord have **new and relevant** evidence that was not available at the time of the original Hearing?

Facts and Analysis

The Landlord provided a copy of two MLS listing contracts dated March 12 and September 20, 2012, and a two page written submission. In her submission, the Landlord states that she probably should have submitted a one month notice to end the tenancy for cause rather than a two month notice to end tenancy for landlord's use. She also states that the Tenants caused damage to the rental unit.

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 Dispute Resolution Officer**;
- the evidence is credible, and
- the evidence **would have had a material effect on the decision** of the Dispute Resolution Officer

Only when the applicant has evidence which meets **all five criteria** will a review be granted on this ground.

I dismiss the Landlord's Application for Review because the evidence provided by the Landlord was available at the time of the original arbitration hearing. In the Decision dated May 16, 2013, the Arbitrator found that the Landlord did not complete what she said she would complete that required her to end the tenancy, and that therefore the Tenants were entitled to compensation under Section 51(2) of the Act.

The Application for Review process is not an opportunity to re-argue the case.

It is important to note that the Landlord did not file an application against the Tenants for damages, and may do so if she desires.

The original Decision and Order dated May 16, 2013 are confirmed.

Conclusion

The Landlord's Application for Review Consideration is dismissed.

The original Decision and Order dated May 16, 2013 are confirmed.

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: June 03, 2013

Residential Tenancy Branch