



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes MNSD, MNDC, RR, FF

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states 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 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground new and relevant evidence that was not available at the time of the hearing. The applicant has also applied for an extension of time to apply for review.

The reason for the applicant's request for an extension is "*take time to find enough evidences*"

The applicant has listed and provided copies of the following three items that she states were unavailable at the time of the hearing.

1. Tenant Ledger from previous residence
2. Email from previous landlord
3. Invoice for repair of toilet

The applicant states that she could not get the ledger from the previous landlord prior to the hearing. She states that this is relevant to her case as it shows her history of steady monthly payments and liquidated damages.

The applicant states that the email from the previous landlord could not be located prior to the hearing and would confirm her payment of liquidated damages and show that she moved out on November 30, 2012.

The applicant states that the invoice for the toilet repair could not be located prior to the hearing and would show that she personally paid \$568.00 to fix the toilet.

Analysis

Extension of time:

The Act specifically provides a fifteen day time-frame in which a party can apply for review with respect to an application of this nature. The applicant states in her application that she received the decision dated May 23, 2013 on June 03, 2013.

In this case, the applicant applied for a review 22 days after having received the decision. The applicant stated that the reason she was unable to apply for review within the required time frame was that she needed more time to find the evidence.

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66).

In this matter, the word *exceptional* implies that the reason(s) for failing to apply for a Review in the time required are very strong and compelling. On reflection of the tenant's application for review, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing for Review within the legislated time limit and accordingly I dismiss the application.

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 hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

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 an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing.

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.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence. All the evidence listed above was in existence at the time of the hearing.

With respect to the matter regarding the payment of rent for the last month of tenancy, it was not a matter unknown to the tenant at the time of the hearing. The tenant may disagree with the Dispute Resolution Officer's findings of fact, but the tenant had an opportunity to respond to the landlord's evidence at the hearing.

I find that the tenant has not submitted any new evidence and therefore has failed to meet the criteria of the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error

Conclusion

I dismiss the Application for Review Consideration. The original decision made on May 23, 2013 is 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 28, 2013

Residential Tenancy Branch