



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ERP LRE MNDC MNR O PSF RP RR

Introduction

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 not available at the time of the hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The landlord has submitted a Request for Review consideration in which they are alleging that a Review is warranted based on the ground that new and relevant evidence has come to light that was not available at the time of the original hearing.

Issues

Whether there is new relevant evidence that did not exist or could not be obtained prior to the hearing that would have changed the decision.

Facts and Analysis

In support of the application, the landlord submitted into evidence the following:

- a copy of the application for review consideration.
- a copy of the monetary order and the dispute resolution decision dated June 10, 2013.
- Written testimony and a list of monetary claims being made by the landlord.
- Copies of photos.

The landlord has requested review consideration of a decision on the tenant's application in which the tenant was partially successful in obtaining a monetary order.

In the Application for Review Consideration of that decision, the landlord indicated that there was evidence that was not available at the time they attended the hearing that would have changed the outcome.

The landlord's application for Review Consideration contained the following statement in the space titled "*NEW AND RELEVANT EVIDENCE*" , "*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.*"

"After the applicants...left the room, damages were discovered during inspection (see attached sheets). The total amount assessed was \$1103.53; the final total after the \$150.00 was subtracted is \$953.53, which the applicants would have to pay to us.

Also in the Residency Tenant Act guide, it states that the act does not apply to; accommodation where the tenant shares the bathroom or kitchen facilities with the accommodation's owner (page 2), which was the case for us."

(Reproduced as written)

The above testimonial evidence was duly considered in this review consideration.

Analysis

The burden of proof is on the Applicant to prove that the criteria for a re-hearing has been met under section 79(2) of the Act, which provides that a decision or order of the director may be reviewed only on one or more of the grounds listed in the Introduction section of this decision.

In regard to new and relevant evidence, *Residential Tenancy Policy 24* states in part that leave may be granted on this basis if the applicant can prove that: he or she has relevant evidence that was not available at the time of the original arbitration hearing, that is new and relevant to the matter which is before the dispute resolution officer. Only when the applicant's evidence meets the above criteria, will a review be granted on this ground.

I find that the landlord was initially required to provide all relevant evidence before the proceeding held on May 6, 2013 but is now alleging that new evidence has come to light that was not in existence or could not be obtained prior to attending the hearing on May 6, 2013 to defend against the tenant's monetary claims.

In determining whether or not there is new and relevant evidence, I find that evidence which was in existence at the time of the original application, and which was not presented by the party, is not considered to be "new evidence" on this ground.

In this instance, I find that the evidence relating to the landlord's losses is new and did not exist at the time of the hearing. However, I find that this evidence is not relevant to

the original dispute, which related solely to a monetary claim by the tenant against the landlord.

I find that, losses or damage claims put forth by the landlord would not be pertinent to a hearing being held on the tenant's application and claim. Therefore, even if this evidence had been available and presented during the original hearing, it would not have affected the outcome, because a party can only make a claim through their own application and hearing. The hearing in question was on the tenant's application and was convened to hear the tenant's claim.

With respect to the landlord's second allegation, raising the issue of jurisdiction, I find that this evidentiary data existed at the time of the hearing and should have been argued at that time. I note that the arbitrator specifically found that the tenant shared the kitchen and bathroom with other tenants and no mention was apparently made by the landlord or tenant about sharing the facilities with the owner of the rental unit. I find that the evidence with respect to the kitchen and bathroom does not qualify as new evidence as it did exist at the time the hearing was held. The landlord was at liberty to present their testimony relating to this issue during the proceedings.

Given the above, I find that the landlord has not succeeded in providing new and relevant evidence that could not have been obtained through due diligence prior to the original application. Therefore, I find that the basis of the Application for Review Consideration put forth on the ground of new evidence is not sufficiently proven to support a Review.

Decision

Section 81(1) of the Act states that a dispute resolution officer may dismiss or refuse to consider the application for one or more of reasons, including that:

- the application fails to give full particulars of the issues submitted for review or evidence on which the applicant intends to rely,
- the application fails to disclose sufficient evidence of a ground for the review,
- the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied, or
- the application is frivolous or an abuse of process.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient evidence to validly support any grounds for a review. I find that the Applicant has not succeeded in

demonstrating that the evidence contained in this Application would meet the criteria as new and relevant evidence for granting a review under either of the ground cited.

Therefore, I hereby dismiss the landlord's Application for Review Consideration without leave and order that the decision dated June 10, 2013 and Order rendered on June 10, 2013 still stand.

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: July 15, 2013

Residential Tenancy Branch