



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

On July 26, 2013 a hearing was held to deal with cross applications. On July 31, 2013 Arbitrator issued a decision dismissing the landlord's monetary claim against the tenant. The landlord has filed an Application for Review Consideration with respect to the landlord's monetary claim against the tenant. I am satisfied this Application for Review has been filed within the time limit provided by the Act.

Section 79(2) of the 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 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 has filed this Application on the basis he has new and relevant evidence that was not available at the time of the original hearing.

Issues

Has the landlord provided new and relevant evidence that was not available at the time of the hearing?

Facts and Analysis

In filing this Application for Review, the landlord provided copies of the following documents not previously submitted by the landlord:

1. An invoice issued to the strata corporation by Belfor Property Restoration on May 22, 2013 for a “deductible” in the amount of \$25,000.00 for water damage originating from unit 1601.
2. An estimate issued to the strata by Belfor Property Restoration on December 19, 2012 showing an estimated cost of \$36,057.48 to make repairs for water damage.
3. A print-out of a “Balance History” for the rental unit address showing transactions posted to the owner’s strata account from August 31, 2011 through August 9, 2013 including a charge of \$25,000.00 on November 26, 2013 for “Insurance Claim”.
4. A “Statement of Account” showing transactions posted to the owner’s strata account from November 26, 2012 through August 9, 2013 including a charge of \$25,000.00 on November 26, 2013 for “Insurance Claim”.

The landlord submits that all of the above documentation was not available for the hearing because the landlord was in China.

The landlord submits that the evidence is relevant because it shows that the cost of the restoration charged to the landlord’s strata account.

A Request for Review is not an avenue to re-argue or provide evidence that could have been provided for the original hearing. Residential Tenancy Policy Guideline 24 provides policy statements with respect to requesting a review of a decision or Order. With respect to making a request for review on the basis of “new and relevant evidence” the policy guideline provides as follows:

New and relevant evidence

A review may be granted on this basis if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

Prior to a hearing, parties must collect and supply all relevant evidence to the hearing. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing. Letters, affidavits, receipts, records, audio, video, and photographs are examples of documents or things that can be evidence.

New evidence includes evidence that has come into existence since the dispute resolution hearing. It also 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, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place.

Evidence in existence at the time of the original hearing 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.

Evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Evidence that would have had a material effect upon the decision is such that if believed and when taken with the other evidence introduced at the hearing, it could reasonably be expected to have affected the result.

A mere suspicion of new evidence is not sufficient to support this ground for review consideration.

[my emphasis added]

An applicant seeking a monetary award against another party bears the burden to prove their claim and provide sufficient evidence in support of their position prior to or at the time of the hearing. Being out of the country prior to or at the time of a hearing does not form a basis to exempt the applicant from their burden of proof.

Below, I have considered whether the documentation submitted by the landlord with this Application for Review Consideration meets the requirements for new and relevant evidence.

The estimate and invoice issued to the strata corporation by Belfor Property Restoration were dated well before the hearing date. Although the landlord may have been in China prior to the hearing the landlord did not indicate he made any attempt to request or obtain the above described documentation from the strata corporation prior to the hearing using one of several methods of requesting and/or receiving documentation, such as: email, fax, courier, or mail. Therefore, I find the landlord did not demonstrate that evidence was unavailable to him by exercising due diligence.

The charge of \$25,000.00 for an “insurance claim” was posted to the landlord’s strata account November 2012. I find it reasonable that the charge would have been reflected in the Statements of Account or a Balance History report printed after November 2012 and prior to the hearing. I find it highly unlikely that a detailed Statement of Account or Balance History report showing a charge of \$25,000.00 was not unavailable to the landlord prior to August 2013 had the tenant requested one from the strata. The landlord has provided no indication that he had requested a detailed statement of Account or Balance History report prior to the hearing. Therefore, I find the landlord has not demonstrated that this evidence was unavailable to him by exercising due diligence.

In light of the above, i find the landlord has not provided new evidence that was unavailable to him prior to the hearing had he exercised due diligence. Therefore, the landlord’s Application for Review is dismissed and the decision issued July 31, 2013 stands.

Decision

The landlord’s request for a review hearing based upon new and relevant evidence has been dismissed. The decision made on July 31, 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: August 20, 2013

Residential Tenancy Branch