



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This review consideration decision is in response to an application for review by the Tenant, pursuant to section 79 of the *Act*. Specifically, the Tenant is requesting a review of the decision made by an Arbitrator on August 08, 2013. In this decision the Arbitrator granted the Landlord a monetary Order in the amount of \$1,400.00. The Arbitrator noted that the Landlord and the Tenant were represented at the hearing.

The Tenant is requesting the review on the basis that there is new and relevant evidence that was not available at the time of the original hearing, pursuant to section 79(2)(b) of the *Residential Tenancy Act (Act)*.

Section 79 of the *Act* reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
 - (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
 - (b) **a party has new and relevant evidence that was not available at the time of the original hearing;**
 - (c) a party has evidence that the director's decision or order was obtained by fraud.

[Emphasis added]

Issues

Has the Tenant established grounds for review pursuant to section 79(2)(b) of the *Act*?

Preliminary Matter

The Tenant has requested an extension of the time limit for filing the Application for Review Consideration.

In the Application for Review Consideration the person filing the Application for Review Consideration declared that he received the decision/Order on August 21, 2013. Although the decision is dated August 08, 2013, there is no information that shows if the decision was received by the Tenant or a representative for the Tenant prior to August 21, 2013.

The Tenant had fifteen days to file this Application for Review Consideration from the date the decision/Order is received. As I have no reason to conclude that the Tenant received the decision/Order prior to August 12, 2013, I cannot conclude that the Application for Review Consideration was not filed within the legislated time period. I therefore find it appropriate to consider the review application, without considering the application to extend the time limit for filing.

Facts and Analysis

In support of the Application for Review the party making the claim on behalf of the Tenant declared that he had made a written request for the return of the Tenant's security deposit; that there was no agreement that the Landlord could retain the security deposit; that the Landlord obtained possession of the rental unit on February 01, 2013; that the Landlord began renovating the unit at the same time efforts were being made to clean the rental unit; that it could not be "cleaned as planned"; that the movers/cleaners had difficulty accessing the rental unit, as the agent for the Landlord was away; that there are emails that demonstrate the difficulty in accessing the rental unit; that the Landlord had the option of cleaning the rental unit, at the expense of the Tenant; that the Landlord did not exercise the option to clean the unit at the expense of the Tenant; and that this information was not available to the agent who represented the Tenant at the hearing on August 08, 2013.

Residential Tenancy Policy Guideline *Grounds for Review of a Director's Decision* states:

"Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution proceeding 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.

New evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the appellant could not

have discovered with due diligence before the arbitration hearing. It 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.

I find that all of the declarations made in the Application for Review Consideration could have been made at the hearing if the party filing the Application for Review Consideration attended that hearing, or if that information had been provided to the person representing the Tenant at that hearing. As the information was available at the time of the original hearing, I find that it does not constitute new evidence. New evidence does not include testimony or documents that could have been provided at the original hearing and was not provided simply because a party did not attend the hearing.

Copies of emails were submitted with the Application for Review Consideration, all of which are dated prior to August 08, 2013. As these emails were in existence at the time of the hearing, I find that they cannot be considered new evidence.

As the Tenant has not established that there is new evidence that was not available at the time of the original hearing, I find that the Tenant has not established grounds for review, pursuant to section 79(2)(b) of the *Act*.

Decision

Section 81 of the Residential Tenancy Act reads:

- (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:
 - (a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];
 - (b) the application
 - (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
 - (ii) does not disclose sufficient evidence of a ground for the review,
 - (iii) 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
 - (iv) is frivolous or an abuse of process;
 - (c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

(2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

I dismiss the application for review, pursuant to section 81(1)(b)(ii) of the *Act*, as the Tenant has failed to disclose sufficient evidence of a ground for review.

The Arbitrator's original decision and order of August 08, 2013 remain in full force and effect.

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 30, 2013

Residential Tenancy Branch