



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MM MNR MNSD

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 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 now applies for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing

Issues

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

Facts and Analysis

The Decision and Order under review is a decision issued by an Arbitrator which awarded the Landlord monetary compensation for \$105.00 plus one filing fee of \$50.00 and awarded the Tenants the return of double their security deposit in the amount of \$1,645.00.

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.

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" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in an arbitration hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be evidence.

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 applicant could not have discovered with due diligence before the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

Evidence is "relevant" that relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact.

Evidence is "credible" if it is reasonably capable of belief.

Evidence that "would have had a material effect upon the decision of the Arbitrator" is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

A mere suspicion of fresh evidence is not sufficient.

In support of their application for review consideration the Landlord submitted the following evidence:

- (1) A real estate listing from October 19, 2009 with a covering letter from a realtor dated September 30, 2103;
- (2) Two photographs;
- (3) A shipping bill of lading dated 8-20-2013;
- (4) E-mails dated May 30, 2013 and May 31, 2013
- (5) And the Landlord's written statement disputing the Tenants' testimony and the Arbitrator's decision.

The only document that was created after the hearing is the Real Estate Agent's written statement. That being said, the Agent's statement refers to a real estate listing from 2009 and could have been obtained prior to the hearing. All the remaining documents were in existence prior to the September 6, 2013, hearing. Accordingly, I find these documents do not meet the test as being new and relevant evidence as they were in existence prior to the hearing and could have been obtained prior to the hearing to be submitted as evidence by the Landlord.

Residential Tenancy Branch Rules of Procedure stipulates when evidence is to be submitted in support of a claim as follows:

3.4 Evidence to be filed with the Application for Dispute Resolution

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio evidence at the same time as the application is filed.

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure [Emphasis added].

In this case although the Real Estate Agent's letter was created after the hearing occurred, I find it does not meet the test as new and relevant evidence because the

Landlords could have discovered or provided this evidence prior to the September 5, 2013 hearing if they did their due diligence.

Based on the forgoing analysis I find the Landlord's application for review consideration must fail on the grounds of new and relevant evidence.

Decision

Overall I find that pursuant to Section 81(b) the application does not disclose sufficient evidence of a ground for the review.

The Decision and Orders made on September 6, 2013, stand.

This decision is legally binding and 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: October 04, 2013

Residential Tenancy Branch