



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNR MNSD OPR

Issues

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.

In this case, Tenant RG (the tenant) applied for a review on the basis of new and relevant evidence and on the basis of fraud, the second and third of the grounds listed above.

Although the tenant did not specifically select the first ground as one of the reasons he was seeking a review of the original decision, he did fill in a portion of the section of the application for review form in which an applicant can also seek a review on the basis of having been unable to attend. The original decision clearly stated that the tenant did participate in the September 19, 2013 teleconference hearing of these dispute resolution applications. I find that there is no valid application to seek a review of the original decision on the basis of the tenant's being unable to attend the original hearing.

Facts and Analysis 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 Arbitrator;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

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 a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing.

“Evidence” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into 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 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 before the hearing took place. 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.

In response to the instruction “List each piece of new and relevant evidence and state why it was not available at the time of the original hearing and how it is relevant”, the tenant provided the following explanation:

The evidence submitted to RTB is false. Fraudulent misleading.

Although the tenant did not attach any new evidence that he maintained was relevant to the matters determined by the Arbitrator, he submitted additional information to the Residential Tenancy Branch on October 3, 2013. I have reviewed this information, which included:

- two letters issued by the tenant well after the hearing was held;
- a notice he sent to other tenants in this building;
- a copy of a newspaper article;
- one page of the Residential Tenancy Agreement (the Agreement); and
- the tenant's descriptions of the landlord's agent's alleged failure to properly repair the tenant's toilet and a leak in his kitchen sink.

After reviewing this material, I find little relevance to any of the information the tenant has submitted to support his application for review. I find that the exact date of the signing of the Agreement has little bearing on whether or not the tenants failed to pay their rent for July or August 2013, the months in dispute. Some of the documents submitted are merely reiterations of the tenant's concerns about the landlord's practices and the unfairness that the tenant believes is inherent in the Act. The concerns about the effectiveness of repairs, outlined in what appears to be the tenant's reconstruction of a July 31, 2013 maintenance request from the tenant, lacks credibility and could have been raised during the course of the original hearing.

After giving the tenant's application for review and attachments careful consideration, I find little new and relevant that would have had a material effect on the original decision. Most of the evidence presented by the tenant as "new and relevant" could have been produced at the original hearing, with the exceptions of the irrelevant October 2013 letters issued after the original hearing and even after the tenant's application for review was submitted. The tenant failed to provide any explanation as to why this evidence could not have been provided at the original hearing. Neither the information now submitted, nor the tenant's awareness of the issues is relevant. I find the tenant's evidence submitted on this application for review is more in the nature of an attempt to re-argue the same matters that were before the Arbitrator at the original hearing.

The review process is not intended to provide a party with an opportunity to present additional evidence that was available but not presented at the original hearing in order to strengthen arguments that were considered but rejected by the Arbitrator at the original hearing. Much of the tenant's evidence appears to be a reiteration of his claim that his evidence should have been accepted at the original hearing and that the Arbitrator should not have reached the decision she arrived at in her September 20, 2013 decision. The decision of the Arbitrator is final and binding subject to the three grounds for applying for a review as set out earlier in this decision.

I find that the tenant's application fails to meet most if not all of the five criteria outlined above. All five of these criteria would have to have been met in order to enable me to order a review of the original decision.

I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. I also note that the tenant's original application appears to have confused this ground with his subsequent application for a review on the basis of fraud. For this reason, I also find that the tenant's application is unclear and does not include full particulars of the issues submitted for review.

Facts and Analysis - Fraud

This ground applies where a party has evidence that the Arbitrator's decision was obtained by fraud. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator, and that the evidence was a significant factor in making the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying. It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator.

In this case, the tenant responded as follows to the request in the application for review form to identify "which information submitted for the initial hearing was false and what information would have been true:"

Fraudulent misrepresentation of evidence – tenancy agreement & claim that work done.

He added that dates had been falsified and that the landlord's agent had misrepresented the truth.

In the subsequent document he supplied to support his application for review, the tenant claimed that he "had never even set foot on the premises of P Apartments prior to January 2013" and had no recollection of signing the page of the Agreement he attached at any time. The tenant supplied no other corroborating statements to verify his claim that he had never been to this property until January 2013. However, the tenant did not deny that he was a tenant at the rental unit by July 2013, the date when the landlord issued the 10 Day Notice to both tenants. Since the tenant clearly had in his possession a copy of the Agreement, he had an opportunity at the hearing to call

into question the authenticity of both his signature and the date of his signature at the original hearing.

Other than the tenant's conversion of his allegation that the landlord submitted a fraudulent document into written evidence, the tenant has supplied no new information that would call into question the authenticity of the Agreement. More importantly, the tenant has not demonstrated how this would have made any difference to the Arbitrator's finding that the tenants did not pay their rent for July and August 2013 and had no legal right to withhold that rent.

I find that the tenant has not provided evidence of fraud either with respect to the Agreement or the repairs conducted by the landlord. The tenant has not provided credible evidence to demonstrate that the original decision was based on fraudulent evidence submitted by the landlord. It would appear that the tenant is attempting to reargue the same issues which he raised unsuccessfully at the original hearing. Other than his claim that the landlord's evidence was fraudulent, he has supplied no conclusive evidence of fraud.

For these reasons, I find that the tenant has not submitted sufficient evidence to demonstrate that the original decision was obtained by fraud. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. I also dismiss this portion of the tenant's application because the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied. The original decision and Orders are therefore confirmed.

Decision

The decision and Orders made on September 20, 2013 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: October 08, 2013

Residential Tenancy Branch