



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

A Hearing was held on October 22, 2013 to deal with cross applications. The Landlord applied for a monetary order for unpaid rent and damage; to apply the security deposit towards partial satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenants. The Tenants applied for a monetary order for storage costs; a refund of hydro costs; compensation for a reduction in the value of the tenancy and loss of quiet enjoyment; double the amount of the security deposit; and to recover the cost of the filing fee from the Landlord.

On November 6, 2013, a Decision was issued. The Arbitrator made the following findings:

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$323.99** comprised of \$603.99 stove top replacement less the \$280.00 the tenants are entitled to for failure of the landlord to provide a dishwasher.

I order the landlord may deduct this amount from the security deposit held in the amount of \$600.00 in satisfaction of this claim. I grant a monetary order to the tenants in the amount of **\$276.01** for return of the balance of the security deposit held.

The Tenants filed an Application for Review Consideration indicating they received a copy of the Arbitrator's Decision on November 12, 2013, by mail.

Section 79(2) under the *Residential Tenancy Act* provides that a party to a 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 Tenants have filed this Application for Review indicating all three of the above grounds.

Issues

1. Have the Tenants shown that they were unable to attend the Hearing due to circumstances beyond their control that were not anticipated?
2. Have the Tenants provided new and relevant evidence?
3. Have the Tenants established that the Decision or Orders were obtained by fraud?

Background and Evidence

With respect to the first ground, the Tenants submit:

"I was in the hospital Having A knee replacement.

That the basement room that Carmen had all her stuff in was not part of the agreement, all her stuff was suppose to be in the glass room and her shop out in the yard that was in the agreement. and that the stove being a glass top is like any other stove, if a burner is to fail would a tenant be responsible for fixing that? That is the same as a glass top failing it is wear and tear and things break down."

The Tenants provided a copy of a letter from the health authority and a Record of Admission from the health authority indicating that the male Tenant was hospitalized from October 21 to October 23, 2013.

With respect to the second ground for review, the Tenants submit:

"The Hydro Bill was not calculated at time of hearing it just became available in Nov 2013 showing the Eplus credit that was issued for the time that I was a tenant. I was informed by [the Landlord] to be able to eliglabe for the EPLUS credit we needed to put the Hyrdro back in her name which I did and paid the bills but it took until June for them to put back in the meter and then to adjust the credits."

The Tenants provided a copy of the Hydro bill dated November 4, 2013, in the Landlord's name at the rental property address.

With respect to the second ground for review, the Tenants submit:

Which information submitted for the initial Hearing was false and what information would have been true?

"Hydro was being estimated at time of Hearing and [the Landlord] stated that it was not being adjusted and as the hydro bill will show that the Meter was installed in June as no more adjustments were made as Meter was reinstalled by June 30 when we moved out."

How did the person who submitted the information know it was false?

"She was told it was going to be recalculated by Hydro as she informed me."

How do you think the false information was used to get the desired outcome?

"so she would not have to reimburse me for hydro"

Analysis and Findings

I have considered the Tenants' submissions and provide the following findings with respect to each of the grounds for review.

Unable to Attend

I accept The Tenants' evidence that the male Tenant was in hospital, but the female Tenant signed into the teleconference on October 22, 2013, and gave testimony. Therefore, I find that the Tenants were represented at the Hearing by the female Tenant and this ground for review is dismissed.

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.

The Arbitrator made the following finding in the November 6, 2013, Decision:

In relation to the tenants' claim for compensation, in the amount of \$636.40, related to additional costs for hydro because the landlord's enrollment issues with a hydro program for homeowners, **I find the tenants have provided insufficient evidence as to the requirement of the landlord to pass on any program savings to the tenant if the program is intended for homeowners. In addition the tenants have provided no evidence as to the amounts of savings that they may or may not be entitled too.** For these reasons I dismiss this portion of the tenants' claim.

(my emphasis added)

I accept the Tenants' submission that the hydro bill is new evidence that was not available at the time of the original arbitration hearing; however, I find that it would have had no material effect on the Decision of the Arbitrator. The Arbitrator found that the Tenants provided insufficient evidence that they were entitled to any rebate for a program **intended for a homeowner.**

The Application for Review Consideration process is not an opportunity to re-argue the case.

Fraud

In order to succeed in an Application for Review, the applicant must show a reasonable likelihood that the Decision would have been different had fraudulent information not been relied upon. Whether or not the final adjustment had been made to the hydro bill, the Arbitrator found that the Tenants had not provided sufficient evidence that they were entitled to any rebate.

In light of the above, I find the Tenants have not provided evidence that the decision was obtained by fraud or that the decision would have been any different had the Arbitrator been provided the information submitted by the landlord with this Application.

Having found the Tenants have not provided sufficient evidence or a basis to grant a review hearing this Application for Review is dismissed pursuant to section 82 of the Act.

Conclusion

The Tenants' request for a review hearing has been dismissed.

The Decision and Monetary Order issued November 6, 2013 stand and remain enforceable.

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: November 20, 2013

Residential Tenancy Branch