



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC O OPT

Introduction

The landlord has applied for review consideration of a decision and Monetary Order granted in favour of the tenant on October 23, 2013 within the time limit for doing so, as provided under section 79 of the Act.

Section 79 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. The landlord has applied under the ground “a party 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 original hearing?

Facts and Analysis

Residential Tenancy Policy Guideline 24 provides information with respect meeting the criteria for a review hearing based upon the requirements of section 79 and 81 of the Act. With respect to new and relevant evidence, the policy guideline states, in part:

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.

[my emphasis added]

In support of the landlord's application for review the landlord provided copies the following documentation:

1. A tenancy application completed by the tenant on September 25, 2013;
2. An email to the tenant from the landlord's agent dated September 27, 2013
3. Text messages between the tenant and landlord's agent dated September 25, 2013 and September 26, 2013.

The original hearing was held on October 23, 2013 and all of the above described documentation pre-dated the original hearing by almost four weeks. The landlord did not present any reason why the above documentation was not submitted to the Residential Tenancy Branch and served upon the tenant prior to the original hearing so that it could be considered by the Arbitrator. Therefore, I find the landlord's has not provided new and relevant evidence that was not available at the time of the original hearing and I dismiss the Application for Review Consideration.

In light of the above, I dismiss the landlord's Application for Review Consideration.

Decision

The landlord's Application for Review Consideration has been dismissed. The decision and Monetary Order made on October 23, 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 19, 2013

Residential Tenancy Branch