



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNSD RP RR

Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on October 31, 2013 (the original decision), with respect to his application for dispute resolution.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- 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.

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.

The tenant applied for a review on the basis that he had new and relevant evidence that was not available at the time of the original hearing, the second of the grounds outlined above.

Facts and Analysis

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.

The application for review form asks the applicant to “List each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant.” The applicant/tenant responded as follows:

My evidence is not new. The arbitrator made a small error. I am showing receipts and checks the arbitrator though my rent was \$1400.00/month. The rent was \$2800.00/month. He made money paid back on the grounds of rent being \$1400.00 my rent was double that....

(as in original)

The applicant also attached copies of three rent cheques to demonstrate that his correct monthly rent was \$2,800.00, and not the \$1,400.00 identified in the original decision.

In this case, the tenant has stated that his evidence is not new. For that reason, alone I would not be able to allow this application for review. This information was also clearly available at the time of the hearing. The tenant maintained that the original arbitrator made an error in stating the monthly rent for this tenancy.

I find that the tenant has failed to meet the first two of the five criteria outlined above that would enable me to grant his request for a review of the original decision. I dismiss the landlord's application for review on the basis that the application discloses insufficient evidence of this ground for review. The original decision is therefore confirmed.

I also note that the relevance of the difference in rent is uncertain. This may have had an effect on the original decision, but it may have had no impact whatsoever.

Rather than submitting new evidence, it would appear that the tenant is claiming that the arbitrator erred in his understanding of the sworn testimony provided by the parties as to the correct monthly rent for this tenancy. It may be that the tenant actually intended to request a correction or a clarification of the original decision. If that is his desire, he should contact the Residential Tenancy Branch (the RTB) for information on how to seek a correction or clarification of the original decision. The tenant may also obtain information on how to seek a correction or clarification of the original decision from the original arbitrator by referring to the RTB's website.

Decision

The decision and Order made on October 31, 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: November 20, 2013

Residential Tenancy Branch