



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNSD

### Introduction

This is an application by the landlord for a review of a decision rendered by an Arbitrator on November 22, 2013, as corrected on December 12, 2013 (the original decision), with respect to the landlord's 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 landlord applied for review on the basis that she had new and relevant evidence that was not available at the time of the 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.

In her three-page document in support of her request for a review of the original decision, the landlord noted that the tenant did not attend the teleconference hearing and the only sworn testimony considered was given by the landlord. She maintained that had the Arbitrator asked questions of her differently, the landlord would have provided different sworn testimony that would have led to a different outcome regarding her \$1,115.63 claim. She disagreed with the Arbitrator’s consideration of her claim and award of \$528.68 of that claim based primarily on the landlord’s own sworn testimony at the hearing.

The landlord commenced her submission with the following statement:

*...**Why are these things relevant as evidence now?**...It was not until I received the dispute resolution decision and understood why the RT Officer had asked*

*about renovations, that I realized the way she had asked me the questions below, greatly affected how I answered them due to the poor way she communicated the actual questions. How is this relevant? My answers greatly affected the outcome of the case financially for me due to the way I answered the misunderstood questions...*  
(as in original)

After reviewing the circumstances of her application, the legislation and the tenant's actions, the landlord noted that she had been unable to replace carpet or the blinds in this rental unit, those items where the original Arbitrator did not fully allow her claim for a monetary award. The landlord requested "that the RT Officer request that the tenant compensate the landlord for FULL damages of \$1115.85 because of her lack of responsibility to keep her agreement or follow the RTA guidelines or deadlines as noted." She asserted that the original decision needed to be more thoroughly reviewed with all facts considered. Other than her three-page submission and a copy of the original decision, the landlord provided no other written evidence in support of her application for review.

I have considered each of the five criteria outlined above, which would all need to be demonstrated in order to allow the landlord's request for a review of the original decision.

I find that the landlord has not provided any written evidence that could not have been made available at the time of the original hearing. Her entire submission is based on a correction or revision of the sworn oral testimony she presented at the original hearing. While some of this evidence is new, by her own admission, she noted that her answers to the questions asked by the original Arbitrator "greatly affected the outcome of the case financially for me due to the way I answered the misunderstood questions." The dispute resolution hearing process leads to the issuance of a final and binding decision by an arbitrator, subject only to the correction and review process available under the Act. The review process is not designed to enable a party to revise sworn oral testimony given at the original hearing, once that party gains an improved understanding of the impact that the sworn testimony would have on the claim after having read the final and binding decision.

I also find some of the landlord's evidence, particularly evidence regarding the tenant's failure to pay rent for the remainder of her tenancy, is not relevant to the matter that was before the original Arbitrator. The landlord's claim did not identify any request for loss of rent arising out of the tenant's failure to fulfill the remaining portion of her fixed term

tenancy agreement. As such, the original Arbitrator did not identify this issue as part of the landlord's claim for damage arising out of this tenancy.

I find that the landlord is essentially requesting that the revised information contained in her three-page document is to be believed and the sworn oral testimony she provided at the hearing disregarded with respect to the age of the carpet and her evidence regarding the blinds in this rental unit. In her written submission, presented after she received the final and binding decision, the landlord maintained that she completely replaced carpet in the rental unit last year as a result of water damage beyond repair. She made no claim that she referred to the replacement of the tenant's carpet in the evidence presented at the original hearing, nor has the landlord produced any supporting evidence to demonstrate the expenses she incurred for this carpet replacement during the year before this tenancy began. Even if such evidence did exist, I find that she was aware of this carpet replacement well in advance of this hearing and could clearly have referred to this carpet replacement at the hearing. The review process is not designed to provide a party to correct mistakes that the landlord made with respect to her own sworn testimony given at a hearing. Under these circumstances, I find that the landlord's current assertion regarding her new evidence lacks an element of credibility.

Finally, given that the landlord has stated that she has not actually replaced the carpets or the blinds, a fact which may or may not have been apparent to the original Arbitrator, I find that the landlord's evidence may not have had the material effect on the original decision that the landlord is seeking.

I find that the landlord's application for review fails to meet most if not all of the five criteria that would be required to obtain a review of the original decision. As was noted above, failure to meet any one of the five criteria would be sufficient to dismiss her application for review. In coming to this determination, I also find that much of the landlord's application for review is essentially a disagreement with the original Arbitrator's decision, her weighing of the evidence before her, including primarily the landlord's own sworn testimony, and the care taken by the Arbitrator in reaching her decision. The review process does not provide a party to review a decision because that party wishes to have a reweighing of evidence based on new submissions or presentations that could have but were not presented at the original hearing.

I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. I also find that 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 is therefore confirmed.

Decision

The decision made on November 22, 2013 stands.

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: December 16, 2013

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Residential Tenancy Branch