



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that a party to the dispute may apply for a review of a Decision or Order. The application must contain reasons to support one or more of the following 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 is applying for Review on grounds two and three of the grounds for review as set out above.

The Decision/Order under review is a decision and orders with respect to the Tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement. The Tenant sought a total of \$2,951.00 in compensation.

The Arbitrator provided the Tenant with a monetary order in the amount of \$85.00.

Preliminary Matter

Did the Tenant file his Application for Review within the time limit allowed by Section 80 of the Act?

Section 80 of the Act requires a party to apply for Review **within 15 days after** receipt of a Monetary Order. In this case, the Tenant indicated on his Application for Review Consideration that he received the Decision and Order on December 31, 2013.

Therefore, I find that the Tenant filed his Application within the required time frame.

Issue(s)

1. Has the Tenant shown that he has new and relevant evidence that was not available at the time of the original Hearing?
2. Has the Tenant supplied sufficient evidence to show that the Decision/Orders were obtained by fraud?

Facts and Analysis

1. New and Relevant Evidence

Leave may be granted on this basis if the Tenant can prove that:

- he has evidence that was **not available at the time of the Hearing**;
- the evidence is **new**,
- the evidence is relevant to the matter before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the Decision.

Only when the Tenant has evidence which meets **all five criteria** will a Review be granted on this ground.

On this ground for Review, the Tenant submits, "Please carefully read [another decision]. I have highlighted several very unfair issues concerning the decision. The Tenant had the belongings listed not just old razors in five or six shopping bags." (reproduced as written)

"New" evidence includes evidence that has come into existence since the arbitration Hearing. New evidence does not include evidence that could have been obtained before the Hearing took place.

On this ground for Review, I find that the Tenant has not provided any "new" evidence **that was not available at the time of the Hearing**, or that was **new evidence**. The Decision dated December 10, 2013, indicates that the Tenant supplied a copy of the other decision dated September 1, 2011, which was considered by the arbitrator. **The review process is not an opportunity to re-argue the case.**

I find that the Tenant has failed to meet all five grounds as set out above and therefore I find that the Application for Review on this ground must fail.

2. Fraud

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 that evidence was a significant factor in the making of 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.

Under this ground, under the instruction to list "Which information submitted for the initial hearing was false and what information would have been true?", the Tenant submits:

"The agent and F.P. were at [the rental unit] September 05/2011.

The Tenant was there at 10:30 a.m. September 26/2011 and no one was there.

Decision page 3 last paragraph file [December 10 Decision]"

Under the instruction to list "How did the person who submitted the information know it was false?", the Tenant submits:

"The Tenant was at [the rental unit] at 10:30 a.m. September 26/2011. The agent and F.P. were not."

Under "How do you think the false information was used to get the desired outcome?" the Tenant submits:

"Decision Page 4 6th paragraph file [December 10 Decision]"

Although the Tenants submissions are not clear, it would appear that he is attempting to re-argue the matter again. In any event I find that the Tenant provided insufficient details to support his claim that the Decision was obtained by fraud and therefore I find that the Application for Review must fail.

Conclusion

I dismiss the Application for Review Consideration and confirm the original Decision and Orders dated December 10, 2013.

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: January 24, 2014

Residential Tenancy Branch