



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR OPR

Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on January 13, 2014 (the original decision), with respect to applications for dispute resolution from the landlord and the tenant.

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 of the original decision on the basis of the first and second grounds as outlined above.

Facts and Analysis- Unable to Attend the Original Hearing

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In the application for review, the tenant was asked to explain what happened that was beyond his control or that could not have been anticipated that prevented him from attending the original teleconference hearing. The tenant responded as follows:

*Health disposition or/and technical circumstances together with English limited proficiency stopped me from participation in teleconference hearing.
Explanations on additional pages.*

While the tenant attached a three page document to his application and a copy of the two orders served to him arising out of the January 13, 2014 hearing, he provided little information to explain why his failure to participate in the scheduled hearing was either beyond his control or could not have been anticipated beforehand. He stated that he had an accident three weeks ago, but provided no details on the nature of that accident or how it incapacitated him from either participating in the scheduled hearing himself or arranging for someone else to act as his agent. He added that he has health and physical conditions that limit his perception and hearing abilities, but did not provide anything to confirm this from a health care professional.

Since the tenant had submitted his own application for dispute resolution in addition to the application initiated by the landlord, the tenant would have known well beforehand that this hearing was to be conducted by way of a teleconference. If that were not a viable option for him, he could have arranged for someone to assist him with the hearing process, obtained someone who could help him with translation if necessary, or he could have contacted the Residential Tenancy Branch to ask for an in-person hearing. He made no specific reference to what actually prevented him from participating in the scheduled hearing.

I find that the tenant's application does not disclose sufficient evidence of a ground for review and dismiss his application for review on the basis of being unable to attend the original hearing. I find that the tenant has failed to provide an adequate explanation of why he was unable to attend this hearing because of circumstances that could not be anticipated and were beyond his control.

Facts and Analysis –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 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:

1. *Condition inspection report – Sept 12, 2013 – where I disagree what landlord tried to state/false statement.*
2. *Disability status copy*
3. *Current physician doctors statement about conditions that must be followed and my health problems*

The condition inspection report of September 12, 2013 would clearly have been available to have entered into written evidence prior to the original hearing. The tenant's only document he attached to his application for review was a barely legible copy of his Wallet Card for the Parking Permit Program for People with Disabilities. I am uncertain as to what relevance this card would have to the issues that were before the original Arbitrator. The tenant attached no information from his current physician. It is also unclear as to what relevance information from his current physician would have had on the matters that were before the original Arbitrator and led to her decision to end this tenancy because the tenant had not paid his rent.

The tenant's application also included a statement where he confirmed that he withheld a portion of his rent to pay for changes he had made in the rental unit. The tenant produced nothing to demonstrate that he had obtained an order from an Arbitrator to allow him to make these deductions. The *Act* requires a tenant to pay rent when it is due. The *Act* does not permit a tenant to arbitrarily withhold rent for expenses he believes should be deducted from his rent without the authorization of the landlord or by way of an order of an Arbitrator appointed under the *Act*.

As noted above, an applicant for review on the basis of new and relevant evidence needs to meet all five of the criteria in order to obtain a review hearing. In this case, I find that the tenant has failed to meet most and likely all of the five criteria outlined above that would enable me to grant his request for a review of the original decision. I dismiss the tenant's application for review on the basis of new and relevant evidence because I find that the application discloses insufficient evidence of this ground for review.

I also find that the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely. Further, the application does not disclose a 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.

For the reasons outlined above, the original decision is therefore confirmed.

Decision

The decision made on January 13, 2014 stands and the Orders issued on that date remain in force and effect.

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 23, 2014

Residential Tenancy Branch