



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: OPC

Introduction

In accordance with section 79(2) of the Residential Tenancy Act a party to a dispute resolution application is entitled to apply for a review consideration of a decision and Orders. 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 has submitted an application for Review Consideration of a decision she received on January 21, 2104; the application was made the next day.

On November 25, 2013 the tenant had applied to cancel a 1 month notice ending tenancy and for more time to cancel a Notice she received on October 24, 2013. The landlord submitted a cross-application requesting an Order of possession.

Issues

The tenant has applied for review consideration based on 1 ground:

1. A party has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

Section C2 of the tenant's application indicated "I wasn't heard by the arbitrator." In support of this submission the tenant supplied a letter signed by an individual who indicates she was present in the room during the hearing held on January 15, 2014. This individual states that the tenant was not provided with time to make submissions; that she was given "10 seconds;" and then cut off.

The tenant supplied a letter in which she explains that she believes she is being evicted for reasons that are not legitimate. The tenant disputes the reasons given on the notice. The tenant states she was recovering from surgery.

The decision issued on January 15, 2014 determined that the tenant did not prove that her late application requesting cancellation of the Notice ending tenancy was based on any exceptional circumstances. The tenant received the Notice on October 24, 2013 and was required to apply to dispute that Notice within 10 days of that date.

Decision

On the ground of review; new and relevant evidence, leave may be granted if the applicant can prove that:

- she 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 arbitrator,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

The tenant has stated she was not given time to make submissions during the hearing; but the tenant has not made any submission with her application for review which can be considered as new and relevant evidence. An allegation that a party was not heard does not equate to grounds for review.

The tenant has not supplied documents which might prove she had experienced extraordinary circumstances that barred her from making her application to dispute the Notice ending tenancy within the required time-frame. In the absence of any submission that would have proved exceptional circumstances it is likely the arbitrator was able to make their determination based on what the tenant describes as a brief submission. However, a letter stating the tenant was not heard and that she had surgery does not constitute new and relevant evidence.

If the tenant had new and relevant evidence that was credible and could have a material effect on the decision issued, then a review hearing would be appropriate. However, in the absence of anything more than a written statement by the tenant and her friend, I find that the tenant has not shown she has new and relevant evidence that was not

available at the time of the hearing. Exceptional circumstances may include medical emergencies or natural disasters; but the tenant has failed to supply any new and relevant evidence in support of her application for review consideration.

I note that the Notice ending tenancy includes a clause that warns a tenant that if application to dispute the Notice is made outside of the required 10 day time-frame there must be proof that the tenant had a serious and compelling reason for not filing the application on time.

Therefore, I find that the application for review consideration is dismissed and that the decision and Order issued on January 15, 2014 is confirmed.

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 29, 2014