



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: AAT CNL FF OLC RP

Introduction

The landlord applies for a review of a Decision dated January 13, 2014. The original application of the tenant was heard on the same date and the original hearing was attended by both parties.

Division 2, Section 79(2) under the *Residential Tenancy Act* (the 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 relies on the second ground for Review - Section 79(b) of the Act.

Issues

Does the applicant provide sufficient evidence of a ground for Review as afforded by Section 79 of the Act?

Facts and Analysis

The landlord's application is accompanied by 5 document pages in addition to the standard requirements of the application.

I have carefully reviewed the landlord's application and I have reviewed the Arbitrator's Decision of the original hearing.

79(2)(b) The landlord states they have *new* and *relevant* evidence not available at the time of the original hearing.

It must be noted that the Decision of January 13, 2014 specifically states it only deals with the tenant's application to cancel the Notice to End Tenancy.

The landlord submitted a narrative respecting some evidence in dispute which was submitted in the original hearing and subsequently addressed in the Decision. As well the landlord submitted 4 document pages all dated within October 2013.

The landlord may well have advanced relevant information in respect to this matter, thus meeting a portion of the test of this ground for Review. However, all the evidence to which the landlord refers to as new in their application for Review is *not new* and was *available* at the time of the original hearing.

It must be emphasised that a Review is not an opportunity to re-argue the case. Under this prescribed ground for Review “new” evidence includes evidence that is *relevant to the proceedings*, and, *that has come into existence since the arbitration hearing*. However, “new” evidence does not include evidence that could have been obtained, or advanced, or submitted by the parties before the hearing took place.

The landlord may disagree with the Arbitrator’s findings of fact, but they had opportunity to respond to all the evidence at the hearing. The landlord’s submissions may be relevant, but they are not *new* and were *available* at the time of the original hearing. I find that the landlord, by their Application for Review, has attempted to re-argue the case and introduce information that could have been submitted at the original hearing. I find the landlord has not satisfied the burden of proving that they have *new* and *relevant* evidence not available at the time of the original hearing and as a result the application on this ground must fail.

The Act permits an Arbitrator to dismiss an application for Review for reasons prescribed in **Section 81** of the Act, which in relevant part state:

81(1)(b) the application

- (ii) does not disclose sufficient evidence of a ground for the review,
- (iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

For all the reasons above **I dismiss** the application for Review. **The Decision and Order made on January 13, 2014 stand and are 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

Residential Tenancy Branch