



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Introduction

The Decision/Order under review is a decision on the Tenant's application for return of the security deposit and penalties under Section 38 of the Act. The Tenant's application was granted and the Tenant was provided with a monetary award of double the amount of the security deposit and pet damage deposit and recovery of the filing fee.

The Landlord filed its application 5 days after receipt of the Decision, which is within the allowable deadline.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 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 Landlord applies for review on the second ground set out above.

Issues

Does the Landlord have **new and relevant** evidence that was not available at the time of the original hearing?

Facts and Analysis

In its Application for Review Consideration, the Landlord indicates:

"I have new and relevant evidence that was available at the hearing but – I was denied opportunity to testify and denied opportunity to question the applicant."
(reproduced as written)

In support of its application for review, the Landlord provided written submissions with respect to what the Landlord's agent would have testified to at the Hearing.

The Landlord also questioned the Arbitrator's monetary calculations in arriving at the monetary award for the Tenant.

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 Dispute Resolution Officer**;
- the evidence is credible, and
- the evidence **would have had a material effect on the decision** of the Dispute Resolution Officer

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

I dismiss the Landlord's Application for Review because the evidence provided by the Landlord was available at the time of the original arbitration hearing and is neither new nor relevant to the matter that was before the Dispute Resolution Officer at the Hearing. In the Decision dated March 10, 2014, the Arbitrator found that the Landlord had no right under the Act to retain all or part of the security and pet damage deposits. The Landlord is encouraged to refer to Sections 5 and 38 of the Act. The Landlord may disagree with the Arbitrator's findings, but the Application for Review process is not an opportunity to re-argue the case.

The Landlord may not make a claim through the Tenant's application for dispute resolution. The Landlord remains at liberty to make its own application for dispute resolution under the provisions of Section 67 of the Act.

The Landlord may seek a correction or clarification if it believes the Arbitrator made an obvious error in arriving at the monetary award. The Landlord may also file for Judicial Review in the Supreme Court of British Columbia.

Conclusion

The Landlord's Application for Review Consideration is dismissed.

The original Decision and Order dated March 10, 2014 are therefore 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: March 31, 2014

Residential Tenancy Branch