



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On November 12, 2014, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. The landlord had applied for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and an Order to keep the tenants' security deposit. The tenant had applied to cancel a 10 Day Notice to End Tenancy for unpaid rent; for an Order for the landlord to comply with the *Act* and other issues. The Arbitrator found that both parties' claims had some merit and granted the landlords' an Order of Possession and a Monetary Order. The tenant has applied for a review of this Decision.

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.

Issues

The applicant relies on sections 79(2)(b) of the *Residential Tenancy Act* (the “Act”); that the party has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

New and Relevant Evidence

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

- he has evidence that was not available at the time of the original 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.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has attached a copy of the Decision and Monetary Order issued at the original hearing, a Monetary Order Worksheet from the landlord, two copies of water bills and written submission. The tenant submits that the second water bill provided is for \$272.52 and is now being billed to the tenant when this water bill was not part of the original hearing and was not decided upon by the Arbitrator. The landlord has delivered a Monetary Order Worksheet and now requests a larger amount to be paid than that which the Arbitrator ordered to be paid.

I have reviewed the evidence provided for this hearing and find that this evidence is not new or relevant. A tenant is only required to pay the amount of the Monetary Order

issued at the previous hearing and only this order is enforceable through the Provincial Court. If there is a further amount to be paid for utilities then the landlords must provide a copy of that utility bill to the tenant with a written demand for payment within 30 days. If the tenant does not pay that amount then the landlords are entitled to file an application to seek a Monetary Order for unpaid rent. The landlords have also requested additional rent for extra days the tenant has overheld at the unit since the previous hearing. Again the tenant should pay this amount to the landlords; however, unless the landlords have filed a new application to obtain a further Monetary Order for unpaid rent since the original hearing they cannot pursue enforcement based on their own calculations or request.

The tenant's request for a review of the decision based on the grounds of new or relevant evidence is denied. This application should have been made under a clarification of the original decision and not for a review consideration.

Decision

The tenant's application for review consideration is dismissed.

The decision made on November 12, 2014 stands.

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: November 27, 2014

Residential Tenancy Branch