



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metro Vancouver Housing Corporation
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

This is an application filed by the tenants for review of the September 16, 2015 decision and order of an arbitrator. The applicants relied on sections 79(2)(b) of the *Residential Tenancy Act* (the "Act") which provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

The decision under review was the outcome of the Landlord's application for a monetary award for damages for the cost to clean and repair the rental unit and for an the retention of the security deposit in partial satisfaction of the award. In the September 16th decision the arbitrator granted the landlord a monetary award for cleaning and repairs in the net amount of \$502.33 after deduction of the tenants' security deposit of \$424.52.

In their application for review consideration the tenants claimed to have new and relevant evidence that was not available at the time of the original hearing. The tenants said in the application that:

1. Landlord provide incorrect information regarding monthly rent. I paid full amount of rent until Sept. 2012, as of October 1st 2012 my rent was \$730 as I was laid off from my job and could not afford paid rent in full. As I received disabilities my rent was \$240 per month, effective Mar. 1, 2014 –Please see attached copy
2. Doors had never been replaced. It was old with stickers and then damage by leaking water from the roof. Please find attached copy of many maintenance form requesting painting and fixing inside townhouse after 5 times flooding! (reproduced as written)

The tenants submitted documents concerning her rent calculations; all the documents were in existence before the hearing and the tenant's rent was not in issue in the proceeding. The tenant submitted copies of maintenance requests. The forms were dated from Mar, 2004 to October, 2014. The bulk of the requests concerned requests made before 2011. Two forms were dated in 2014. The tenant also submitted some photographs of the rental unit.

The Residential Tenancy Policy Guideline #24 concerning Review applications contains the following passage with respect to “new evidence”:

A review may be granted on this basis if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

Prior to a hearing, parties must collect and supply all relevant evidence to the hearing. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing. Letters, affidavits, receipts, records, audio, video, and photographs are examples of documents or things that can be 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, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place.

Evidence in existence at the time of the original hearing 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.

All of the documents submitted by the tenants on this review were known to them and available at the time of the original hearing. This ground for review does not countenance the submission of additional evidence after a decision has been rendered because the applicant is unhappy with the outcome and wishes to introduce additional evidence that could have been submitted before the hearing. This review application amounts to an attempt to re-argue matters dealt with at the original hearing based on evidence that could have been, but was not submitted before the hearing. I note that the arbitrator took the tenant's evidence into account in her decision. She reduced the award to the landlord's for replacing doors because of the age and condition of the existing doors. The tenants' application for review on the ground that they have new and relevant evidence that was not available at the time of the original hearing is denied.

For the above reasons I dismiss the application for review consideration. The original decision and order dated September 16, 2015 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: October 19, 2015

Residential Tenancy Branch

