



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MND MNDC

### Introduction

On October 24, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for a monetary order. The landlord was partially successful on his application and 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.

The applicant relies on section 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.

### Issues

Does the applicant have relevant evidence that is new and was not available at the time of the hearing?

### Facts and Analysis

Residential Tenancy Policy Guideline #24 provides as follows:

*"New" evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration 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.*

In order to successfully argue that a review hearing should be granted on the grounds of new and relevant evidence, the applicants must prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing.

In his application, the applicant must list each piece of new and relevant evidence and must explain its relevance, must explain why it was unavailable at the time of the hearing and must state in what way the decision of the dispute resolution officer may have differed if the evidence was available and introduced at the time of the hearing.

In his application for review, the landlord states that the rental unit which was the subject of this dispute, is now being rented and he has filed a copy of the rental agreement with the new tenant. However, while this evidence is new and was not available at the time of the hearing, I must determine whether it is relevant to the decision and whether it will have an effect on the decision.

The Dispute Resolution Officer based the decision on the landlord's testimony that he had decided not to rent out the unit, after the tenant moved out. Since it was not available for rent, the landlord did not suffer a loss of income and accordingly his claim for loss of rental income was dismissed. Therefore I find that that the landlord decided to rent the unit some time after the hearing and I also find that by presenting a rental agreement that was entered into on February 15, 2011 will not change a decision made on November 03, 2011. The decision to deny the landlord's application for a monetary order for loss of rental income was based on the testimony of the landlord himself.

In his application for review, the landlord also states that the arbitrator "*presumed a fact which was not true. The pictures were taken on or about Jan4/2011(of garbage and recycle) whether from Christmas or not was not the landlord's responsibility*"

The Dispute Resolution Officer based the decision regarding the accountability of the tenant for the overflowing recycling bins, on the fact that the housing situation is a multi family one and it is impossible to distinguish the amount of the tenant's recycling from that of the other occupants. Therefore the landlord's application for compensation to clear the recycling bins was dismissed.

### **Decision**

I find that the landlord has not submitted any new evidence that is relevant to this dispute and therefore has failed to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

The Dispute Resolution Officer considered all the evidence before him, in the making of his decision and made his decision based on the fact that the landlord decided not to rent out the unit and therefore did not suffer a loss of income. The Dispute Resolution Officer also based the decision on the fact that it was impossible to determine the amount of recycling items; the tenant was responsible for, in this multifamily rental building. Therefore, even if the applicant had filed any of the items of evidence mentioned above, that he states is new evidence, it would not have changed the decision of the Dispute Resolution Officer.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application 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. Accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

**The original decision dated November 03, 2011 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: December 06, 2011.

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Residential Tenancy Branch