# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC RR

Introduction

This is an application by the applicant for a review of a decision rendered by a Dispute Resolution Officer (DRO) on December 23, 2011, with respect to an application for dispute resolution from the tenants. Although the applicant was not named as the landlord on the tenants' application or in the December 23, 2011 decision (the original decision), the applicant submitted that she was the daughter of the owner of this property who has been looking after this property for her mother. Whether she is the owner or the owner's daughter, at any rate, she retained VLM and MH to act as the agent. As VLM and MH were clearly identified as agents in this decision, I accept the applicant's submission that she has standing to apply for review as the owner or the owner's daughter empowered to look after this rental property, even though her name does not appear in the tenant's application or the original decision.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

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.

In this case, the applicant requested a review because he or she was unable to attend the hearing and because he or she had new and relevant evidence that was not available at the original hearing, the first and second of the grounds noted above. The applicant also requested an extension of time to make this application.

Facts and Analysis – Extension of Time Request

According to the *Residential Tenancy Act* (the *Act*) and as set out in the Application for Review Consideration Form, an applicant for dispute resolution for a decision where the decision or order related to repairs or maintenance or for services or facilities must be submitted within 5 days of the date the applicant received the decision. Since a principal portion of the original decision involves these issues, I find that this application for review consideration needed to have been submitted by January 8, 2012, but was not submitted until January 11, 2012.

In the Application for Review Consideration, the applicant stated that an extension of time was needed because "It is during the holiday seasons and the office of VLM was close." Even if I were to accept that this were the case, the applicant admitted that she received the decision on January 3, 2012, after the winter holidays had ended. As such, the applicant still took more than the allowable 5 days to submit this application for review.

The *Act* provides that a DRO may extend or modify a time limit established by the *Act* only in **exceptional circumstances**. I do not accept that the closure of VLM during the holiday season would have had an impact on the applicant's failure to meet the 5-day time frame for lodging an application for review. However, I do recognize that the applicant may have thought that she had 15 days to submit an application for review as the tenants' application did lead to the issuance of a monetary award for items that the applicant may have misinterpreted as separate from repairs, maintenance, services or facilities. I also acknowledge that there is an element of cross-over in the tenants' application for dispute resolution between those issues that would be subject to the 5-day deadline for submitting an application for review and those that would be subject to the 15-day deadline for any other unnamed part of the *Act*. For these reasons, I will give the benefit of the doubt regarding the interpretation of the deadline to the applicant and grant the requested extension of time to make this application.

Facts and Analysis – Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and

- could not be anticipated.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing.

In the Application for Review Form, the applicant was asked to list the reasons that prevented the applicant from attending the original hearing. The applicant responded as follows:

> *I did not attend the hearing because I have chronic...health issue that this hearing will affect my emotion stability. If you like, you can contact my doctor at XYZ ...Health Team.*

In the Application for Review Form, the applicant responded as follows to the request to identify the testimony or additional evidence he or she would have provided had he or she attended the original hearing:

> *I have already attached the five pages of personal letter written to the RTB along with my new evidence.*

I have reviewed the six-page January 10, 2012 letter and attachments that the applicant sent to the DRO who issued the original decision. From her letter, her attachments, her application for review and the original decision, it is clear that she retained VLM to manage this property for the owner. In her January 10, 2012 letter, she stated the following:

> *...In the first place, I didn't know that arbitration is an extremely serious one-time incidence that I relied on the property manager to attend the hearing for me and gathering the evidence for me. I am not saying that the property manager and the caretaker haven't done their jobs properly, but it's a very tricky process after I hear all the opinions after receiving this arbitration result issued by you...*

In her January 10, 2012 letter, she made repeated references to her hiring of VLM to manage the property and of her ongoing contact with VLM to ensure that the property was being managed in accordance with her wishes. There is no question that VML was hired to manage this property for the owners of this building. I note that VLM was identified as the landlord in the residential tenancy agreement for this tenancy entered into written evidence by the tenants.

I find that the owner of this property or the owner's daughter retained VLM as property managers for this rental property. As noted in the original decision, the agent from VLM participated in the first hearing of this matter which was adjourned and the December 20, 2011 hearing that gave rise to the December 23, 2011 decision. As was noted in the original decision, "both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary

form, and to cross-examine the other party, and make submissions..." The original decision provides ample reference to testimony presented by the landlord's agent.

From the applicant's following comment in her January 10, 2012 letter, it would seem that she is dissatisfied with the outcome resulting from the representations made by the property manager and the agent:

> *...I can't rely on the property management company because management companies are difficult to run especially good managers are difficult to find...*

However, the choice of who should attend and represent the interests of the owner of this property was a matter for the property manager, the agent and those who empowered them to act on the owner's behalf to make.

I find no basis to order a review of the original decision on the basis that this applicant did not attend. In coming to this decision, I also note that the applicant has provided no evidence from a health care provider that would lend any support to her explanation as to why she did not attend the December 20, 2011 hearing. The landlord's interests were represented at the hearing by a professional property management company at this hearing. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review.

<u>Facts and Analysis – New and Relevant Evidence</u>

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 DRO;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the DRO.

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

It is up to a party to prepare for a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence.

Evidence which was in existence at the time of the original hearing, and 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.

"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 before the hearing took place. Evidence that "would have had a material effect upon the decision of the DRO" is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

The Application for Review Form asks an applicant to list each item of new and relevant evidence and to state why it was not available at the time of the hearing and how it would have been relevant to the matters in dispute. In response, the applicant provided the following:

1- *The new renovation of Suite 9 bathroom invoice that was available because this renovation was made before VLM managing AB.*
2- *All the evidence that I have done to make sure the new boiler is able to install and provide an environmental friendly and warm building.*

As supporting evidence, in addition to the six-page letter referenced earlier in this decision, the applicant attached copies of emails sent regarding quotes obtained for the new boiler and a building inspection email.

I find that the invoice referred to by the applicant could have been given to the property management company looking after this matter for the owner of this building prior to this hearing. Even if this evidence were relevant, there is no valid reason why this was unavailable at the original hearing.

I find that there is ample reference in the "Background and Evidence" section of the original decision to the landlord's agent's evidence with respect to the efforts to repair the boilers in this building. If the applicant or the landlord's property manager or agent believed that it would assist their position by submitting copies of emails attached to the applicant's review request, there is no valid reason why these could not have been entered into evidence prior to the hearing. In reaching this determination, I note that some of these emails were sent to and from the same agent who represented the landlord's interests at the December 20, 2011 hearing. As outlined above, the review process does not enable applicants to submit evidence that was clearly in existence prior to the original hearing but for whatever reason was not submitted for consideration by the DRO.

The review process is not designed to allow an unsuccessful party to reargue the same issues that were before the DRO at the first hearing by claiming she has new and relevant evidence. I find that this application for review fails to demonstrate that much of the information she presented as new is in fact not new. Those portions of this evidence that the landlord's agent did not present before the December 20, 2011 hearing and had a bearing on the issues before the previous DRO certainly could have been entered into oral or written evidence during that hearing process. I find that much of the evidence submitted by the applicant as new was available at the time of the original dispute resolution hearing.

I find that the landlord has failed to meet most of the five criteria outlined above that would enable me to grant her request for a review of the original decision. As noted above, there is no reason that this evidence could not have been presented at the previous hearing. I also find that much of the evidence presented has little if any relevance to the reasons identified in the original decision and would likely have had little effect on the original DRO's reliance on the evidence and testimony provided by the tenants. Much of this application for review appears more in the nature of an attempt to re-argue the matters that were before the DRO at the original hearing, but which did not result in the outcome the applicant was hoping would be achieved.

I dismiss the landlord's application for review on the basis that the application discloses insufficient evidence of this ground for review. I also find that the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied.

For these reasons, I confirm the original decision in this matter.

Decision

The decision made on December 23, 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: January 17, 2012

Residential Tenancy Branch