



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNR ERP LRE MNDC MNR RP

Introduction

The Decision/Order under review is a decision on the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent; to cancel a Notice to End Tenancy for Cause; for recovery of the cost of emergency repairs; for an Order that the Landlord make emergency and regular repairs to the rental unit; and for an Order suspending or setting conditions on the Landlord's right to enter the rental unit. The Tenant's application was dismissed in its entirety and the Landlord was provided an Order of Possession pursuant to the provisions of Section 55 of the Act.

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 Tenants applies for review on the second ground set out above.

Issues

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

Facts and Analysis

In her Application for Review Consideration, the Tenant indicates:

"I HAVE ALOT OF RECEIPTS (NOT ALL BECAUSE I MAYBE THREW THREW THEM OUT WHEN I WAS CLEANING AND DOING THIS BED BUG

INFESTATION PREVENTION OF SUPPLIES I NEED TO BUG FAST BECAUSE THIS WAS AN EMERGENCY. THESE RECEIPT ARE ALL OF MONEY I NEEDED TO SPEND TO FIGHT OF THESE BED BUGS THAT I SAW WHEN I MOVED MY BED TO A WALL CONNECTING TO”

(reproduced as written)

In support of her application for review, the Tenant provided copies of the Decision and Order dated December 11, 2012, and 38 pages of documents which include written submissions, receipts and letters of reference.

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 Tenant's Application for Review because the evidence provided by the Tenant 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 December 11, 2012, the Arbitrator found that the Tenant had no right under the Act to withhold rent and dismissed her application to cancel the Notice to End Tenancy for Unpaid Rent. The Arbitrator also dismissed the remainder of the Tenant's application because the Tenant did not provide sufficient evidence to support her claims. The Application for Review process is not an opportunity to re-argue the case.

The original Decision and Orders dated December 11, 2012 are therefore confirmed.

Conclusion

The Tenant's Application for Review Consideration is dismissed.

The original Decision and Orders dated December 11, 2012 are 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: December 21, 2012

Residential Tenancy Branch