



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD

Introduction

This is an application by the tenant for a review of a decision rendered by Arbitrator on October 18, 2013 (the original decision), with respect to an application for dispute resolution from the landlord.

An Arbitrator 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.

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 (the tenant) applied for a review on the basis that he claimed to have new and relevant evidence that was not available at the time of the original hearing, the second of the grounds outlined above.

Facts and Analysis

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 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.

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 Arbitrator” 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.

In response to the instruction “List each piece of new and relevant evidence and state why it was not available at the time of the original hearing and how it is relevant”, the tenant provided the following explanation:

I received on the November 1st the withdrawn of my Criminal Records Review that stated my innocence for what happened the day of April 18, 2013 like I explained I was abused of my situation and the court dropped all the charges. So I did not create what happened like the landlord said and I am not responsible in breaking the lease I just follow the law that gave me conditions to not going back to the place and to not getting any contact with FF

Plus, I added the email that Mr S, the landlord, sent to FF and sent a copy for me as well where he explained the situation that I was out of the lease and then he knew that she got new roommates and asked for new deposit and fees.

(as in original)

The tenant attached three documents to his application for review. Two of these emails of April 22, 2013 and April 23, 2013, existed well in advance of the original hearing of October 10, 2013. The April 23, 2013 email was from the tenant to the landlord. The third document attached by the tenant was a copy of an October 29, 2013 Notice of Withdrawal of the tenant's inclusion on the Criminal Records Review process by the Ministry of Justice. No further information as to the reasons for the withdrawal from this process were included in this document.

I find that the two emails were clearly available at the time of the original hearing and were submitted into written evidence by the tenant a number of times before the original hearing.

The only new evidence that was not available at the time of the original hearing was the October 29, 2013 Notice of Withdrawal. While I find that the Notice of Withdrawal was new and credible, I find that it has no relevance to the matter that was before Arbitrator, nor would its inclusion in the tenant's written evidence have had any material effect on the original decision.

At page 2 of his decision, Arbitrator noted:

...Both parties agreed that the co-tenant, P.P. vacated the rental unit on April 18, 2013 due to a domestic dispute resulting in the Tenant, P.P. complying with a court order to not contact the co-tenant, F. F. or attend her residence...

Whether or not the tenant was able to subsequently have charges against him withdrawn has no bearing on the above-stated set of facts that were agreed to by both parties at the original hearing. Arbitrator's decision did not take into account who was responsible for the domestic dispute or whether charges laid against the tenant were valid. Rather, he noted that the tenant left the rental unit on April 18, 2013, and the remaining tenant, FF, vacated the rental unit on May 31, 2013. His focus was on the tenancy itself and not who was responsible for the tenant leaving the rental unit.

In his decision, Arbitrator included an extensive quote from Residential Tenancy Policy Guideline #13, regarding the Rights and Responsibilities of Co-Tenants. He noted that this Policy Guideline clearly establishes that a tenant moving out before the end of a

fixed term tenancy agreement, such as was the case in this situation, “remains responsible for the lease until the end of the term.” He also noted that this Policy Guideline would only allow a tenant to end his responsibilities regarding the original fixed term tenancy agreement “If the landlord and tenant signed a written agreement to end the lease agreement, or if a new tenant moves and a new tenancy agreement is signed, the first lease agreement is no longer in effect.” Arbitrator noted in his decision that he found no evidence that both parties mutually agreed to amend the existing tenancy agreement to remove the tenant from that agreement, and found that there was no evidence that a new tenancy agreement was signed by the co-tenant, FF, including her new roommates in that agreement. As such, Arbitrator found that this tenancy did not end until May 31, 2013. The emails submitted by the tenant reveal that the landlord knew that the tenant had left and requested the remaining tenant to sign a new tenancy agreement including her new roommates. However, the tenant has provided no new evidence that any such agreement was signed or that the landlord the tenant had signed a written mutual agreement releasing the tenant from responsibility for the original fixed term tenancy agreement.

I find that the arguments currently presented by the tenant in his application for a review on the basis of new and relevant evidence were known to Arbitrator, with the exception of the October 29, 2013, Notice of Withdrawal. As noted above, I find that this Notice has no relevance whatsoever to the issues before Arbitrator or in the reasons he identified for rendering his decision. I also find that much of the tenant’s application for review appears more in the nature of re-arguing the issues that were before Arbitrator when he made his final and binding decision.

I find that the tenant’s application for review fails to meet most of the five criteria that would be required to obtain a review of the original decision. As was noted above, failure to meet any one of the five criteria would be sufficient to dismiss his application for review. In this case, the tenant has failed to meet four of the five criteria for most portions of his application.

I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. I also find that 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. Overall, I also find that the tenant’s application is somewhat unclear as to some of the evidence he provided and how this would have had any bearing on the matters before Arbitrator at the original hearing. The original decision is therefore confirmed.

Decision

The decision and Order made on October 18, 2013 stand.

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 13, 2013

Residential Tenancy Branch