



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute codes: MNDC OLC RR

Introduction

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:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. A party has new and relevant evidence that was not available at the time of the original hearing.
- c. A party has evidence that the director's decision or order was obtained by fraud.

The Landlord has applied for review consideration on the ground (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.

Issues

Was the Landlord unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control?

Facts and Analysis

The Decision and Order under review is a decision issued by an Arbitrator which awarded the Tenant a monetary order for loss of quiet enjoyment and damages in the amount of \$500.00.

The Landlord states on her review consideration application that she was unable to attend because she was "on vacation in China". The Landlord also indicated that she spoke the Tenant prior to her leaving and the Tenant had told her she was not going to the hearing and that she would cancel it.

The hearing on November 28, 2013, was scheduled to proceed at 1:00 p.m. As outlined in Residential Tenancy Branch Guideline #RTB-114, hearings will proceed at the scheduled time unless the Arbitrator decides otherwise. There is nothing in the decision of December 13, 2013, that would cause me to conclude that the Arbitrator altered the start time of the hearing.

Residential Tenancy Branch Policy Guidelines suggest that a person requesting a review pursuant to section 79(2)(a) of the *Act* must provide “supporting evidence” to establish that the circumstances which led to the inability to attend the hearing were beyond the control of the applicant and could not have been anticipated. I concur with this guideline.

The Landlord submitted the following evidence in support of her application for review consideration: a written statement; four photographs; and one hydro bill.

There was no evidence before me to support that the Landlord was out of the Country during the scheduled hearing time and there is no evidence that would indicate that they were prevented from calling into the hearing even if they were out of the Country. Participants call into teleconference hearings from all over the world. Furthermore, there is no evidence that indicates why the Landlord did not arrange to have an agent attend on her behalf.

After careful consideration of the aforementioned, I find that the Landlord submitted insufficient evidence to establish that she was unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control. I therefore find that the Tenant has failed to establish grounds for a review pursuant to section 79(2)(a) of the *Act*.

The Landlord did not apply for review consideration on the grounds that they have new and relevant evidence or on the grounds of fraud. However, the Landlord wrote her written submission on her application for review consideration under these sections.

As noted above, the Landlord submitted the following evidence in support of her application for review consideration: a written statement; four photographs; and one hydro bill.

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 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 before the hearing took place.

In this case two photos and the hydro bill were in existence at the time of this hearing and the remaining two photos taken after the hearing could have easily been obtained prior to the hearing. Based on the forgoing analysis I find the Landlords’ application for review consideration must fail on the grounds of new and relevant evidence.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

The reasons the Landlord relies on for proving this Decision and Order were obtained by fraud are simply the Landlord’s written arguments which could have been presented at the hearing, had she been represented.

Based on the aforementioned, and upon review of the Landlords’ written submission provided along with their application for review consideration, I find that the Landlord is simply attempting to reargue the case and have not met the burden to prove grounds for a review.

Accordingly, I find that the Landlords have failed to prove new and material facts, or newly discovered and material facts, which were not before the Arbitrator, and from which the Arbitrator conducting the review consideration can reasonably conclude that the new evidence, standing alone and unexplained, was not available at the time of the hearing and would support the allegation that the decision or order was obtained by fraud.

Decision

Overall I find that pursuant to Section 81(b) the application does not disclose sufficient evidence of a ground for the review consideration and 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.

The Decision and Order made on December 13, 2013, stand.

This decision is legally binding and 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 03, 2014

Residential Tenancy Branch