

24. Review consideration of a decision or order

July 2011

This Policy Guideline is intended to provide a statement of the policy intent of legislation, and has been developed in the context of the common law and the rules of statutory interpretation, where appropriate. This Guideline is also intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This policy guideline addresses:

- grounds on which a review may be considered
- when the Residential Tenancy Branch (RTB) may accept, refuse or dismiss an application for review of a decision or order
- the format of the hearing, if a review is granted.

GROUND FOR A REVIEW

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*¹ (the Legislation) provide for a review of a decision or order if:

- a party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control;
- a party has new and relevant evidence that was not available at the time of the original hearing; or
- a party has evidence that the decision or order was obtained by fraud.

Unable to attend

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

- beyond the control of the applicant, and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

For example, a review may not be granted if a participant's phone batteries were drained. One may be granted if there was a system-wide failure.

¹ *Residential Tenancy Act*, s. 79; *Manufactured Home Park Tenancy Act*, s. 72

24. Review consideration of a decision or order

July 2011

New and relevant evidence

A review may be granted on this basis if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

Prior to a hearing, parties must collect and supply all relevant evidence to the hearing. Evidence refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a dispute resolution hearing. Letters, affidavits, receipts, records, audio, video, and photographs are examples of documents or things that can be 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, such as photographs that could have been taken or affidavits that could have been sworn, before the hearing took place.

Evidence in existence at the time of the original hearing 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.

Evidence is relevant if it relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact. Evidence that would have had a material effect upon the decision is such that if believed and when taken with the other evidence introduced at the hearing, it could reasonably be expected to have affected the result.

A mere suspicion of new evidence is not sufficient to support this ground for review consideration.

Decision obtained by fraud

Fraud is the intentional use of false information to obtain a desired outcome.

Fraud must be intended. An unintended negligent act or omission is not fraudulent.

Intentionally providing false testimony would constitute fraud, as would making changes to a document either to add false information, or to remove information rendering the document false. Fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

24. Review consideration of a decision or order

July 2011

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing, and were not before the RTB. The application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

1. information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it.

ACCEPTING, REFUSING OR DISMISSING AN APPLICATION

Accepting an application

The Legislation² allows the Director to delegate authority to accept, reject or dismiss an application for review consideration of a decision or order.

In accordance with the above noted delegation, the RTB will accept an application for review consideration that is:

- completed in the approved form;
- accompanied by the \$25 filing fee or completed Application to Waive Filing Fee;
- made within the required time limit; and,
- made under a recognized ground for review and is accompanied by evidence and information that supports the ground and discloses a basis for a decision that is different from the original decision.

Refusing an application

The RTB may refuse³ an application for review consideration for the following reasons:

- the application was not made in the approved form;

² *Residential Tenancy Act, s. 9, s. 79, Manufactured Home Park Tenancy Act, s. 9, s. 72*

³ *Residential Tenancy Act, s.79, s. 80, s. 81, Manufactured Home Park Tenancy Act, s. 72, s. 73, s. 74*

24. Review consideration of a decision or order

July 2011

- the application was not accompanied by the required fee or completed Application to Waive Filing Fee;
- the application does not contain complete information or the evidence on which the applicant intends to rely is not attached;
- the application was made outside of the time limit, and the application did not contain sufficient information on the exceptional circumstances that prevented timely application;
- the matter can be dealt with by a clarification or correction (see Policy Guideline 25: Clarifications and Corrections);
- the application does not disclose sufficient evidence of a ground for the review;
- the application discloses no basis for a decision that is different from the original decision; or
- the application is frivolous or an abuse of process.

Approved form: An application for review consideration should be provided on form RTB-2. If it is not provided on this form, it may be accepted if it contains all the information required by form RTB-2.

Time limit: Under exceptional circumstances, the Legislation⁴ allows the RTB to accept an application for review consideration after the time limit. For an application to be accepted after the time limit, the applicant must show they:

- did not wilfully fail to comply with the time limit, and that the applicant's conduct did not cause or contribute to their failure to meet the time limit;
- had a bona fide intent to comply with the time limit, and took reasonable and appropriate steps to comply with it; **and**
- brought forward their application as soon as was practical, under the circumstances.

Policy Guideline 36 (Extending a Time Period) provides more information on exceptional circumstances.

Sufficient information: An application for review consideration should contain specific points, details or circumstances that warrant a review of the original decision. The ground(s) for review should be stated and supported by evidence that could lead to a different decision.

Frivolous or abuse of process: An application is frivolous when it lacks any arguable basis or merit in either law or fact. It is an abuse of process when the applicant wishes to reargue the case or submits an application for review in order to postpone the decision or order issued after the original hearing.

⁴ *Residential Tenancy Act, s. 66; Manufactured Home Park Tenancy Act, s. 59*

24. Review consideration of a decision or order

July 2011

Dismissing an application

The RTB may dismiss⁵ an application for review consideration for all the reasons that it could be refused, with the following differences:

- an application may be dismissed because the applicant failed to pursue their application diligently or because the applicant did not follow an order made in the course of the review
- an application may not be dismissed because it was not made in the proper form. (See discussion above in the *Refusing an application* section.)

FORMAT OF A HEARING, IF A REVIEW IS GRANTED

When a review has been granted, the Legislation⁶ allows the RTB to conduct a review in one of the three following ways:

- by holding a new participatory hearing;
- by holding a written hearing, based solely on the record of the original dispute resolution proceeding and written submissions of the parties, if any; or,
- by reconvening the original hearing.

New participatory hearing: The Director, in most cases, will order a new participatory hearing when the criteria for review are met.

Written hearing: The Director may order a written hearing when:

- the parties displayed excessive animosity; or,
- the parties are geographically far apart (e.g., when one party is in a different time zone).

Reconvened hearing: The Director may order the original hearing be reconvened when:

- neither the landlord nor the tenant could have a perception of bias if the matter were returned to the original decision-maker; **and**
- the issue is narrow in scope and it is the only issue to be decided. Generally, the application will illustrate whether the issue is narrow in scope.

The Director may reconvene a hearing when the original hearing was adjourned and a party did not receive notification of the reconvened hearing.

When a hearing is reconvened because of single, narrow issue, the parties should be informed that the reconvened hearing will focus on the issues raised through the review application.

⁵ *Residential Tenancy Act*, s. 81; *Manufactured Home Park Tenancy Act*, s. 74

⁶ *Residential Tenancy Act*, s. 82, *Manufactured Home Park Tenancy Act*, s. 75