



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## REVIEW CONSIDERATION

### **Introduction**

By application of February 10, 2009, the tenants seek a Review Hearing of a Decision by Dispute Resolution Officer xxxxxxxx of February 4, 2009 following a hearing on the same date.

That hearing was brought on the tenants' application to set aside a Notice to End Tenancy for unpaid rent. The tenants did not contest that the rent was unpaid, the DRO upheld the Notice to End Tenancy and the landlord requested and was granted an Order of Possession effective two days from service.

### **Issue(s) to be Decided**

Section 79 of the *Act* provides for the opportunity of a Review Hearing under circumstances in which the applicant:

1. Was unable to attend the original hearing for reasons beyond their control;
2. Has new and relevant evidence not available at the time of the original hearing;
3. Has evidence that the original decision was obtained by fraud.

In this instance, the applicants submit that the decision was obtained by fraud.

## **Analysis**

The tenants state that the fraud occurred as a result of the landlord having earlier registered the female tenant on the Certificate of Title as a one percent owner of the rental building. This was done to circumvent a local bylaw that requires at least one of the occupants of the home to be an owner. That does not constitute a fraudulent representation by the landlord at the hearing as contemplated by section 79(2)(c) of the *Act*.

The matter of fractional ownership in a dwelling has been addressed by the courts to the conclusion that it does not guarantee a fractional owner exclusive possession of a rental unit. That is a function of the rental agreement which was the subject of the hearing in question.

The tenants also contest the DRO's dismissal of her monetary claims on the grounds that they had not requested a monetary order on the application and had not set an amount. Disagreement with the DRO's findings is not among the previously enumerated reasons for which a party can be granted a Review Hearing.

## **Conclusion**

I find that the applicants have not proven that the landlord obtained the decision by fraud. Therefore, the application for review hearing is dismissed and the decision and order of XXXXXXXXX of February 4, 2009 remain in force and effect.

**Date of Decision:** February 12, 2009

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Dispute Resolution Officer