

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: FF MND MNR MNSD

This is an application for review filed on September 29, 2011 by the tenant for the review of a decision dated September 6, 2011 and received according to the applicant for review on September 16, 2011. The tenant relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2)(b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. Section 79(2)(c) provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

Less than 2 weeks before the original hearing, the landlord amended his claim, almost quadrupling it. He also submitted additional evidence to the Residential Tenancy Branch. At the hearing the tenant advised that she had not received the amended claim or supplemental evidence.

With respect to the first ground for review, the tenant submitted evidence which was available at the time of the hearing but which she did not realize would be relevant as she did not know the extent of the landlord's claim until the hearing commenced. I find that this evidence should be characterized as new evidence since the tenant could not have known the claim made against her prior to the hearing and therefore could not have assembled rebuttal evidence. I find that the evidence is relevant and may have changed the decision of the dispute resolution officer and accordingly I find that a new hearing should take place to consider all of the evidence.

I hereby order that the decision dated September 6, 2011 be suspended until a review hearing has been completed.

The review hearing is scheduled for **November 1, 2011 at 1:30 p.m.** and will be conducted by telephone conference call. A notice of hearing is included with this decision, providing the telephone number and pass code the parties will require to participate in the hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing.

**Any evidence upon which the parties intend to rely at the hearing must be provided in advance of the hearing to both the Residential Tenancy Branch and to the other party. As the tenant has not received the landlord's amended application and accompanying evidence, the landlord is directed to serve these documents and photographs on the tenant forthwith and provide proof of such service at the new hearing. If the tenant intends to rely on any of the evidence submitted with her application for review, she must serve that evidence on the landlord forthwith and provide proof of service at the new hearing.**

As the tenant's application has been granted, it is unnecessary to address the second ground for review.

Dated October 5, 2011

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Dispute Resolution Officer