



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNR MNSD

### Introduction

The landlord originally applied for dispute resolution on August 12, 2011 and a dispute resolution hearing took place on September 6, 2011, and the decision was issued on the same date.

The tenant subsequently applied for review of that decision and was granted a new hearing which took place on November 2, 2011 and a new decision was issued on that same date.

The landlord has now applied for review of the November 2, 2011 decision.

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.

### Issues

The issue to be determined is whether or not the November 2, 2011 decision was obtained by fraud.

The landlord is alleging that the tenant's testimony, that he did not see the damage on the back door because he never used the door, is fraudulent testimony.

The landlord claims that the kid's tent and toys were always in the back yard, and on three occasions the front door lock had been broken and the tenants had to use the back door.

### Facts and Analysis

The application contains information under Reasons Number 3

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

It is my finding that the landlord has not proven the allegation of fraud.

The landlord attended the November 2, 2011 hearing, and had every opportunity to dispute the tenant's statements at that time.

Therefore this is just an attempt to re-argue the case, and the review process is not an opportunity for the parties to re-argue their case.

### Decision

The application for review of the November 2, 2011 decision is dismissed.

The decision made on November 2, 2011 stands.

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 24, 2011.

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Residential Tenancy Branch