



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD OLC

### Introduction

The original dispute resolution hearing was held on November 15, 2011, and a decision and order were issued the same day.

This is a request for a review of that original 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 applicant has stated that they were unable to attend the original hearing because when they called in they mistakenly punched in the wrong code for the conference call and as a result were not linked into the proper conference.

The applicant is also claiming that the original decision was obtained by fraud because some of the information that the tenants supplied to the dispute resolution officer is inaccurate.

### Facts and Analysis

The application contains information under Reasons Number 1 & 3

### Reason 1

It is my finding that the applicants have not shown that they were unable to attend original hearing due to circumstances that could not be anticipated or were beyond their control.

The applicants have stated on their application that they made a mistake when punching in the numbers required to access the conference call. The parties had the correct information and had they followed the instructions they been given, they would have been linked into the conference call.

When parties are given the correct instructions they must take care to ensure that they follow those instructions properly and if they fail to do so they cannot claim that it was beyond their control.

Therefore I am not willing to grant a new hearing under reason 1.

### Reason 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.

In this case, had the landlords attended the original hearing, I see no reason why they could not have made these arguments at that time.

Therefore I am not willing to grant a new hearing under reason 2.

Decision

This application for review is dismissed

The decision made on November 15, 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 30, 2011.

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Residential Tenancy Branch