



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

### Introduction

On November 30, 2011 Dispute Resolution Officer (DRO) XXXXX provided a decision on the cross Applications for Dispute Resolution. The landlord had applied for a monetary order for damage to the rental unit and the tenant had applied for a monetary for return of double the amount of a security deposit and a pet damage deposit. The hearing had been conducted on November 17, 2011.

DRO XXXXX dismissed the tenant's Application for the pet damage deposit but granted double the amount of the security deposit and ordered the return of an "oil deposit", in the amount of \$1,200.00. DRO XXXXX also ordered the landlord was entitled to retain \$224.56 from the security deposit as compensation for the damage and condition the rental unit that the landlord had provided sufficient evidence to establish.

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.

The landlord submits in her Application for Review Consideration that the tenant obtained the decision and order by fraud.

### Issues

The issue to be decided is whether the landlord is entitled to have the decision of November 30, 2011 set aside and a new hearing granted because she has provided sufficient evidence that the original decision was obtained by fraud.

### Facts and Analysis

The landlord submits that the tenant's proof of payment of a pet damage deposit was fraudulent. In his decision DRO XXXXX dismissed the tenant's the portion of the

tenant's Application pertaining to the return of a pet damage deposit because she failed to provide sufficient evidence that one had been paid.

As such, on this matter even, if the documents submitted by the landlord were fraudulent, the tenant did not obtain a decision or order in her favour for the pet damage deposit and therefore did not obtain an order or decision based on fraud.

The landlord goes on to say the tenant provided inaccurate information and lied about the condition of the rental unit and about the landlord fixing things during the tenancy. The landlord has provided no additional evidence to prove these allegations.

Further, it is incumbent on the party claiming loss or damage to present evidence in support of their claim at the dispute resolution hearing. If a party to a dispute provides testimony that is contrary to the party claiming the damage, it is up to the party making the claim to provide evidence *at the hearing* to discredit the other party's testimony. A Review Consideration Application is not an opportunity to reargue the merits of the case.

As to the landlord's statement "Tenant purposely omitted any use of receipts as evidence to fool Mr. XXXX" I note, as above, DRO XXXX did not accept the tenant's evidence for the payment of a pet damage deposit and ordered the return of only the security deposit, in accordance with the evidence of the landlord and Section 38 of the *Act*.

DRO XXXXX also ordered the return of the "oil deposit" as the landlord has no authority under the *Act* to require and/or accept a deposit for anything other than a security deposit or a pet damage deposit and the *landlord* had failed to provide sufficient evidence that the tenant owed the landlord anything for any oil.

As such, I find these assertions by the landlord do not substantiate the decision and order was obtained by fraud.

### Decision

For the reasons noted above, I dismiss the landlord's Application for Review Consideration in its entirety.

The decision made on XXXXXX, 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: December 22, 2011.

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Residential Tenancy Branch