



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

### Introduction

The Applicant/Landlord applies for review of the decision on the basis that the Landlord was unable to attend the Hearing, have new and relevant evidence and have evidence of fraud.

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

Has the Landlord provided evidence to substantiate an inability to attend, new and relevant evidence or fraud?

### Facts and Analysis

The Landlord submits in its application that she was unable attend due to illness, an influenza. The Landlord supplied a letter from the roommate confirming this illness. NO medical reports or letters from a physician were supplied.

The Landlord further submits that the new and relevant evidence is evidence that the Landlord was not served with the application. The Landlord also provided evidentiary materials in the form of a tenancy agreement addendum, receipts and email communications that are noted to be dated prior to the date of the Hearing.

Finally the Landlord submits that the Tenant did not serve the Landlord with the application and that the Landlord was therefore unable to prepare any defence to the claims or to prove the Tenants to be fraudulent.

I find that without medical documentation of a serious medical illness that incapacitated the Landlord from attending the Hearing, the Landlord has not substantiated the first ground of review. Given that the Landlord supplied evidence dated prior to the hearing, I find that none of the evidence is new as it was available at the time of the Hearing. Finally, although the Landlord claims that the Tenants committed fraud, it is clear that the hearing was a cross-application and that Landlord was required to attend for its own application. Had the Landlord attended the hearing, the Landlord could have provided evidence that she was not served and could have asked for an adjournment in order to be served and to be prepared for the Tenant's claim, or alternatively that the Tenant's claim be dismissed for lack of service. Further, even if the Tenants had lied about the service to the Landlord, given that the Landlord was to appear on her own application at the time, this alleged lie could not have been used to obtain an order. Accordingly, I find that the application for review on this last ground fails. I therefore dismiss the application for review.

#### Decision

The application for review is dismissed and the decision made on November 22, 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 15, 2011.

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Residential Tenancy Branch