



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

These two files were dealt with in the hearing that took place on December 5, 2011 and the decision was issued the same day.

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 claims that they phoned in to the hearing at the assigned time however they were put on hold and not connected to the hearing until after the hearing concluded.

They claim that when they put in the access number of 25003994 by the # they got a message saying they were the only one in the call.

The applicants are further claiming that the decision made at the hearing was obtained by fraud because the landlord had already applied on a previous application (file # 773158) for the same thing, that application had been dismissed, and therefore they did not have the right to file an application again.

Facts and Analysis

The application contains information under Reasons Number 1, 2, & 3

There is insufficient evidence for me to make a finding that the applicants were unable to attend the hearing for reasons that could not be anticipated and were beyond their control.

There is however clear evidence that the decision of the dispute resolution officer at this hearing was obtained by fraud.

The landlords had had their previous application for the same thing dismissed and therefore did not have the right to file another application, however there is no indication that they informed the dispute resolution officer that they had previously had an application dismissed.

It is my finding that failure to inform the dispute resolution officer that their previous application for the same claim had been dismissed constitutes fraud.

Decision

The application for review of the both files is allowed and I order that the files be set down for a new hearing. The Residential Tenancy Branch will send out new hearing letters to both parties with the date and time of the new hearing.

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.

Residential Tenancy Branch