



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes**      FF MNDC MNSD

### **Introduction**

This is an application by C.G., who is one of two Landlords named in these proceedings, for a review of a decision rendered by a Dispute Resolution Officer (DRO) on November 21, 2011 regarding the Tenants' application for Dispute Resolution for the return of double their security deposit and pet damage deposit pursuant to s. 38(6) of the Act.

### **Issues**

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, C.G., applied for a Review on all of these three grounds.

### **Facts and Analysis**

1. The Landlord, C.G., claimed that he did not receive the Tenants' hearing package containing the notice of the Dispute Resolution hearing because he did not have a key to his and his former spouse's (ie. the other Landlord named in these proceedings) mail box until approximately November 25, 2011 (following the hearing). The Landlord said that as he has no contact with his former spouse, he was unaware of the Tenants' application.

RTB Policy Guideline #24, Review consideration of a decision or order, says as follows:

“In order to meet the test [for the first ground], the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both beyond a party’s control and could not be anticipated. A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.”

The Landlord, C.G., provided no evidence in support of his assertion that he had no means to access the mailbox to which the dispute resolution hearing documents were mailed. The Landlord did not suggest that the documents were sent to an incorrect address or that the Tenants should have sent the documents to him at some other address. Instead, C.G., argued that he was unaware of the hearing because he does not communicate with his former spouse. I find that the Landlords’ failure to communicate about matters involving their rental property is not a circumstance that is beyond a party’s control. For all of these reasons, I find that the Landlord, C.G., cannot succeed on this ground of Review.

2. The Landlord, C.G., claimed that there was new and relevant evidence that was not available at the hearing (because neither he nor his former spouse attended). In particular, C.G. claimed that the Parties’ tenancy agreement provided that the Tenants would have to pay one month’s rent if they ended the tenancy early. The Landlord, C.G., also claimed that the Tenants are responsible for damages to the rental unit.

RTB Policy Guideline #24 says that,

“a review may be granted [on the second ground] if the applicant can prove each of the following:

- He or she has evidence that was not available at the time of the original hearing;
- The evidence is new;
- The evidence is relevant to the matter described in the initial application;
- The evidence is credible; and
- The evidence would have had a material effect on the original decision.

New evidence includes evidence which the applicant could not have discovered with due diligence before the hearing or that has come into existence since the hearing. New evidence does not include evidence that could have been obtained before the hearing took place.”

I find that none of the evidence referred to by the Landlord, C.G., constitutes “new and relevant evidence” as described above. In particular, I find that the tenancy agreement and an unsigned Mutual Agreement to End Tenancy relied by the Landlord as “new evidence” were documents that were submitted as evidence by the Tenants at the hearing. Instead, I find that the Landlord, C.G., is arguing that he may have had a monetary claim for damages against the Tenants that may have been set off the Tenants’ security deposit and pet damage deposit. However, I find that this is not a relevant consideration in that the Landlords did not file an application for dispute resolution to make a monetary claim against the security deposit which they are required to do under the Act. Consequently, I find that the Landlord cannot succeed on this ground of Review.

3. The Landlord, C.G., claimed that the decision or order was obtained by fraud. In particular, the Landlord claimed that an unexecuted Mutual Agreement to End Tenancy was not completed by him and he denied that the Tenants provided him with a forwarding address in writing.

RTB Policy Guideline #24 says that,

“the Application for review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The Application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.”

While the issue Mutual Agreement to End Tenancy referred to by the Landlord may be relevant evidence to any claim he may have for the Tenants’ alleged early termination of the tenancy, this was not a factor that is relevant under s. 38(1) of the Act and accordingly is not a significant (or any) factor in the Decision that was made on November 21, 2011.

In the Decision, the DRO also noted that the Tenants provided as evidence at the hearing a copy of the document dated July 27, 2011 that contained their forwarding address. The Dispute Resolution Officer accepted the Tenants’ undisputed evidence that this document was served on the Landlords on July 27, 2011. Although the Landlord, C.G., denied this, he provided no evidence in support of his assertion. Consequently, I find that the Applicant has not provided sufficient evidence to conclude that his assertion, standing alone and unexplained supports his allegation that the decision or order was obtained by fraud. As a result, I find that the Landlord cannot succeed on this ground of Review.

**Decision**

The Landlord's application for Review is dismissed pursuant to s. 81(1)(b)(ii) of the Act on the basis that there are insufficient grounds for Review. Consequently, the Decision and Order made on November 21, 2011 remain in force and effect.

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 13, 2011.

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Residential Tenancy Branch