



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD O

### Introduction

On December 19, 2011 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Cause. The hearing had been conducted on December 14, 2011.

That decision dismissed the tenants' Application and granted the landlord an order of possession. The tenants submit they received a copy of the decision and order on December 22, 2011. The tenants did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act (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.

Section 80 states a party must make an application for review of a decision or order of the director within whichever of the following periods applies:

1. Within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to, among other things, an order of possession under Section 55 [order of possession for the landlord]; or
2. Within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to, among other things, a notice to end a tenancy agreement other than under Section 46 [landlord's notice: non-payment of rent]; or
3. Within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in the above two points.

The tenants submit in their Application for Review Consideration that they were unable to attend the hearing for reasons beyond their control; that they have new and relevant evidence that was not available at the time of the original hearing; and that the landlord obtained the decision and order by fraud.

## Issues

The issues to be decided are whether the tenants submitted their Application for Review Consideration within the legislated timeframes. If the tenants have submitted their Application on time it must be decided if the tenants are entitled to have the decision of December 19, 2011 set aside and a new hearing granted because they have provided sufficient evidence that they were unable to attend the hearing for reasons beyond their control; they have new and relevant evidence that was not available at the time of the original hearing; or the original decision and order were obtained by fraud.

## Facts and Analysis

As the tenants submit they received the decision and orders on December 22, 2011 and as the decision and order relate to an order of possession being granted to the landlord in accordance with Section 55, I find the tenants had until December 24, 2011 to submit their Application for Review Consideration.

Due to the time of year, the RTB offices were closed from 4:00 p.m. on December 23, 2011 until 9:00 a.m. on December 28, 2011, as such, the two day deadline of December 24, 2011 fell on a weekend, and it was extended to the next business day. I find the tenants have submitted their Application within the legislated deadlines for consideration.

In the decision dated December 19, 2011 DRO XXXXX indicates that both tenants were in attendance at the hearing. In their Application for Review Consideration the tenants assert "the male tenant was very sick and the female tenant was unable to give testimony due to fraudulent accusations against us with the witness on behalf of landlord."

The tenants go on to say that they had two tenants who are willing to testify that the landlord is lying. The tenants do not say why these witnesses did not attend the hearing.

Section 79(1) states a party to a dispute resolution proceeding may apply for a review of the director's decision or order and 79(2)(a) states "a decision or order of the director may be reviewed only on one or more of the following grounds: a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control."

As the tenant's witnesses were not a party to the hearing, I find their availability to irrelevant to the tenants' Application for Review Consideration. In relation to the tenant's participation in the hearing, I note that the decision documents that the female tenant was participating in the hearing and despite several warnings from the DRO about her behaviour the female tenant was disruptive throughout the proceeding.

As a result DRO XXXXX excluded the female tenant from further participation on the call, a point which she confirmed with the male tenant who took over the call until the female tenant came back on to the call and would not put the male tenant back on to the call. The tenants were disconnected at that point.

As outlined in the decision the DRO had authority to determine whether to allow the continued participation of the tenants in the original hearing based on their behaviour, the tenants cannot now have the decision set aside based on their own behaviour at the hearing. For these reasons, I find the tenants have failed to establish they were unable to attend the hearing for reasons beyond their control.

The tenants further submit they have new and relevant evidence that includes testimony from them and from two tenants in nearby rental units in the same residential property and that they have two RCMP files (copies submitted). In relation to the additional testimony the tenants say they would have provided and from the tenants from the other units these tenants have provided no information as to why it was not available at the time of the original hearing.

Despite the neighbouring tenant's written submission that indicates he was not able to attend the hearing for personal reasons, the applicant tenants have provided no statement or evidence as to why they were not able to provide the neighbours written statement prior to the hearing.

In relation to the two RCMP files submit, I find the latest date on any of these documents is October 3, 2011, at least two months prior to the hearing, as such, I find the tenants have failed to establish any new or relevant evidence has been submitted that was not available at the time of the original hearing, as required by Section 79(2)(b).

To establish a party to a dispute has obtained a decision or order based on fraud the tenants must provide sufficient evidence to establish **all** of the following three points:

1. False information was submitted;
2. The person submitting the evidence knew that it was false; and
3. The false information was used to get the desired outcome.

In regard to the tenants' claim the landlord obtained the decision or order based on fraud the tenants assert the landlord's witness provided false information about an assault. The tenants have provided no evidence to support their claim the evidence was false and they do not say how the person submitting the evidence knew that it was false.

While the tenants state they have witnesses who could provide testimony to establish the landlord did not have cause to end the tenancy, the opportunity for the tenants to make those arguments was in the original hearing and not through the Review Consideration process, as it is not an opportunity to re-argue the case.

As such, I find the tenants have failed to provide sufficient evidence to establish that false information was submitted or the person submitting it knew it was false. I therefore find the tenants have failed to establish the landlord obtained the decision or order based on fraud.

### Decision

For the reasons noted above, I dismiss the tenants' Application for Review Consideration.

The decision made on December 19, 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: January 03, 2012.

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Residential Tenancy Branch