



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: ET FF

### Introduction

On January 30, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession. The hearing had been conducted on January 30, 2012.

That decision granted the landlord an order of possession. The tenant submits he received a copy of the decision and order on February 2, 2012. The tenant did not request an extension of time to apply for Review Consideration.

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 tenant submits in his Application for Review Consideration that he has new and relevant evidence that was not available at the time of the original hearing.

### Issues

The issue to be decided is whether the tenant is entitled to have the decision of January 30, 2012 suspended and a new hearing granted because he has provided sufficient evidence that he has new and relevant evidence that was not available at the time of the original hearing.

### Facts and Analysis

When asked in the Application for Review Consideration Application to list each item of new and relevant evidence and state why it was not available at the time of the hearing the tenant submits that:

- “SW is the landlord of the basement suite at: [dispute address] – S was away from premises at time of dispute – tenancy agreement is between SW and DN;
- False allegations were written in landlord dispute –
  - Living situation between SW & DN have changed;
  - Confirmation of false allegations became available after time of hearing;
  - False information was used to get desired outcome on dispute;
- Applicant tried illegal entry to basement suite – legal advice unveiled this evidence after time of hearing – Applicant tried to get false, illegale evidence thru entry.
- Misunderstanding in order stating SW is a tenant – S was away from premisis at the time of dispute hearing – S came back to the dispute and tried to give proper information to the correct persons. S is trying to get other side of story from the applicant’s false allegations;
- Applicant provided false information on police file in which led to eviction notice – legal advice shed light on this evidence after hearing – results of eviction and order are snowballing with false acusations.”

Despite the tenant’s claim that the tenancy agreement was between him and only one of the named landlords listed in the tenancy agreement, the fact that the landlord SW was away at the time of the dispute does not provide any evidence that potential testimony from the landlord SW is new.

The time for a party to present their case is at the hearing and as such, if the testimony of the second named landlord in the tenancy agreement was relevant to the tenant’s position, the tenant should have ensured that landlord attended the conference call hearing. Conference call hearings can be entered from anywhere.

In regard to the tenant’s assertion that there is a “misunderstanding in order stating SW is a tenant”, I note that there is no mention of SW in the order at all. However, I acknowledge that in the decision the DRO that SW attended the hearing *for* the tenant.

While this does appear to be contrary to what the tenant is indicating in his Application for Review Consideration that SW did not attend, it does not state that SW *is* a tenant and is therefore neither new information nor is it information that is relevant to the outcome of the decision.

Although the tenant has not applied for this Review Consideration on the grounds of fraud, I note the tenant indicates the landlord made many false allegations were “written in the landlord dispute” However, the tenant has failed to identify what those specific statements were, how he knew them to be false, or how they were used to obtain the order and decision.

The tenant does assert that “confirmation of false allegations became available after time of hearing” however, he does not explain what that confirmation was, when he obtained, or why it was not available prior to the hearing.

The tenant has submitted a handwritten document that contains the landlord SW's signature, however, the tenant has failed to submit how any of the statements in this handwritten note are relevant to the matters before DRO XXXXX.

For all of these reasons above, I find the tenant has failed to establish that he has new or relevant evidence that did not exist prior to the hearing. Further, I find that even though the tenant did not apply for a Review on the ground of fraud, I find through his statements that he may be alleging fraud but based on his submissions the tenant has failed to establish any fraud.

### Decision

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

The decision made on January 30, 2012 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: February 13, 2012.

---

Residential Tenancy Branch