



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** MNDC MNSD O

### **Introduction**

This is an application by the agent for the Landlord for a review of a decision and order rendered by a Dispute Resolution Officer (DRO) on March 1, 2012 with respect to an application for dispute resolution filed by the Tenant. In the Decision dated March 1, 2012, the DRO found that the Landlord had breached its duty under s. 32(1) of the Act to make repairs and awarded the Tenant compensation of \$500.00.

### **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's agent did not identify a ground of review on his application but instead made written submissions under the section regarding fraud.

### **Facts and Analysis**

The Landlord's agent stated that he disagreed with the Decision and argued that the Tenant had not followed the recommended practice for asking for repairs set out in the *Guide for Landlords and Tenants in B.C.* The Landlord's agent also argued that the photographic evidence relied on by the Tenant at the hearing was misleading and that there were reasons for the condition of the rental property that were unrelated to any

breach of the Landlord's duty to make repairs. The Landlord's agent also argued that the Tenant's previous application to recover double the amount of his security deposit showed a pattern of deceptive behaviour such that his evidence should not have been believed.

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

"A review may be granted if the person applying for the review (on the ground of fraud) provides evidence meeting **all three** of the following tests:

1. Information presented at the original hearing was false;
2. The person submitting the information knew that it was false; and
3. The false information was used to get the outcome desired by the person who submitted it."

I find that the Landlord's application cannot succeed for two reasons. Firstly, the Landlord did not select a ground of review on his application. Secondly, even if I accept that the ground of review the Landlord intended to select was that of "fraud", I find that he has not satisfied the above-noted test. The Landlord's agent made many allegations but provided no evidence that the information presented at the original hearing was false. In fact the DRO made a finding that the Parties were in agreement about the need for various repairs. The DRO also found that with the exception of one repair, that the repairs were not made despite the Tenant's requests. In short, it is not enough for the Landlord to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying which was all adjudication on by the DRO.

As I understand the Landlord's agent's argument, he is claiming that the Tenant should not have been entitled to compensation because he did not follow a procedure recommended in a publication called, *"Guide for Landlords and Tenants in B.C."* However, the recommendations set out in the Guidebook are not binding as legislation but rather sets out a recommended practice for Parties in an attempt to avoid disputes. Once a dispute ensues, the Act takes precedence and its interpretation and application is left to the Dispute Resolution Officer. In short, I find that the Landlord's agent's written submissions do not support the allegation of fraud but rather set out his reasons for his disagreement with the decision. That however, is a matter for Judicial Review which must be made in the Supreme Court of British Columbia.

Decision

The Landlord's application is dismissed without leave to reapply pursuant to s. 81(1)(b)(ii) that it does not disclose sufficient evidence of a ground for the review.

The decision and order made on March 1, 2012 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: March 21, 2012.

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Residential Tenancy Branch