



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

### Introduction

This is an application filed by the landlord on February 27, 2012 for review of a Dispute Resolution Officer's decision and order dated February 20, 2012 on the above noted matter.

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

In this matter the landlord relies on the second ground; new and relevant evidence not available at the time of the original hearing.

### Facts and Analysis

The application contains information wherein the landlord states that he and three independent witnesses called the conference line on the time and date of the original hearing; however the Dispute Resolution Officer did not acknowledge the presence of any of the parties. The landlord provided written statements from two of the witnesses, wherein they state that they were present when the landlord called into the conference call, that the Dispute Resolution Officer did not acknowledge the landlord, and that they could hear every word spoken during the hearing.

The Dispute Resolution Officer's decision states that the landlord did not attend. I am not inclined to accept that the Officer wilfully disregarded the landlord's call; rather, it is apparent that the Officer could not hear the landlord due to a technological malfunction.

Based on the above submissions, I find that the landlord's application for review would have been better characterized as being unable to attend rather than having new and relevant evidence. Nevertheless, I accept that he was unable to attend the original hearing because of circumstances that could not anticipated and were beyond his control.

### Decision

I therefore allow the landlord's application for review and direct that the review proceed by a new hearing. The parties will be notified of the time, date and call-in particulars for the new hearing. Each party will remain responsible for serving each other with the notice of a dispute resolution hearing and relevant evidence in accordance with the Act.

The decision and order made on February 16, 2012 are suspended pending the outcome 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: March 07, 2012.

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Residential Tenancy Branch