



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** MNDC MNSD

### **Introduction**

On March 29, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary order. The Dispute Resolution Officer granted the tenant's application. The landlord has applied for a review of this decision.

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 applicant relies on section 79(2) (c) of the *Residential Tenancy Act*, which provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

### **Issues**

Does the applicant have evidence that the arbitrator's decision was obtained by fraud?

### **Facts and Analysis**

#### **Decision Obtained by Fraud**

This ground applies where a party has evidence that the decision was obtained by fraud. Fraud may arise where a witness has deliberately misled the Dispute Resolution Officer by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Dispute Resolution Officer's decision was obtained by fraud must provide sufficient evidence to show that false

evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud.

On this ground for review, that the Dispute Resolution Officer's decision was obtained by fraud, the applicant alleges that the tenant committed fraud by:

1. Using a different name to register her application for dispute resolution
2. Receiving a refund of rent that she was not entitled to
3. Offering false testimony about the move out inspection appointment, notice to end the tenancy, leaving a forwarding address and leaving behind her personal possessions.

The landlord has attached evidence to confirm the different names used by the tenant, a copy of the late notice to end tenancy dated July 07, 2011, a copy of the tenant's letter with her forwarding address dated August 16, 2011 and photographs of the items left behind by the tenant after she moved out.

With respect to the matters the landlord asserts are fraudulent, they were not matters unknown to the landlord at the time of the original hearing. They were in existence and could have been submitted at the original hearing.

The tenant may disagree with the Dispute Resolution Officer's findings of fact, but she had an opportunity to respond to the tenant's evidence at the hearing.

It is not enough 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, and the whole evidence adjudicated upon by the Dispute Resolution Officer. A review hearing will likely not be granted where a Dispute Resolution Officer prefers the evidence of the other side over the evidence of the party applying.

The landlord has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The evidence filed with the application for review consists of documents which were in existence and could have been obtained at the time of the hearing. The tenant has not proven any new or newly discovered material facts and how that evidence could have been a significant factor in the making

of the decision. The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof.

The *Act* also allows the director to dismiss an application for review if the application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied. The applicant has failed to prove that a fraud was perpetrated and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error. The landlord is also at liberty to file her own application for damages against the tenant.

### **Decision**

**The decision made on March 29, 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: April 24, 2012.

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Residential Tenancy Branch