



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** OPT

### **Introduction**

The Decision/Order under review is a decision on the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The Tenant submits that he received the Orders on May 11, 2012, by personal service.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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 following 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 applies for review on the third ground set out above.

### **Issues**

Does the Tenant have evidence that the director's decision or order was obtained by fraud?

### **Facts and Analysis**

Under the instruction to list "Which information submitted for the initial hearing was false and what information would have been true?", the Tenant submits:

- The information that the verbal rental agreement was only between the Tenant and the Landlord is false. He submits that the verbal rental agreement was between the Tenant, the Landlord and another registered owner.

- The evidence of the Landlord denying the “indefinite term” of the rental agreement is false. The Tenant submits that the rental agreement was for an “indefinite term” and that he could invest in renovations to the rental unit with the assurance that the rental term was indefinite.
- The information that the rental unit will be occupied by the Landlord’s daughter is false. The Tenant submits that the Landlord’s daughter is incapable of residing in the rental unit due to a disability.

The Tenant submits that the Landlord knew that the information she submitted was false and that she was aware that her daughter requires 24 hour supervision and therefore cannot live in the rental unit. In addition, the Tenant submits that the other registered owner of the rental unit also testified to these facts during the Hearing.

The Tenant submits that the Landlord’s false statements deceived the decision maker and therefore was successful in evicting the Tenant.

The Tenant attached a copy of an Affidavit of the other registered owner dated April 26, 2012 and a copy of his own Affidavit also dated April 26, 2012 to his Application for Review.

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. The burden of proving this issue is on the person applying for the Review.

The Act defines “landlord”, in part, as “the owner of the rental unit”. On page 2 of his decision, the Dispute Resolution Officer accepted that the Landlord and the Tenant’s witness had joint ownership of the rental unit.

The Dispute Resolution Officer found that this tenancy agreement existed and that it was subject to the “standard terms” as required in Section 12 of the Act. He also found that the Landlord ended the tenancy in accordance with the provisions of Section 49 of the Act. Terms of tenancy agreements must comply with the Act. Section 5 of the Act prohibits contracting outside of the Act.

The particulars of the Landlord’s reasons for wishing to end the tenancy were before the Dispute Resolution Officer, as was the Tenant’s position with respect to the Landlord’s

“good faith” intentions. I find that the facts contained in the Tenant’s documents in support of his Application for Review are not newly discovered, nor were they not known to the Tenant at the time of the Hearing.

The submissions of the Tenant, the Landlord and the other registered owner were considered by the Dispute Resolution Officer at the Hearing on April 18, 2012. The Dispute Resolution Officer made findings on the balance of probabilities based on the submissions and testimony of all parties. **An Application for Review Consideration is not an opportunity to reargue the case.**

I find that the Tenant’s application does not disclose sufficient evidence that the Decision and Order were obtained by fraud and therefore I dismiss his application.

### **Conclusion**

The original Decision and Orders dated April 18, 2012, are therefore confirmed.

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: May 3, 2012

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Residential Tenancy Branch