



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION APPLICATION

**Dispute Codes:** CNR

### **Introduction**

On June 05, 2012, a hearing was conducted to resolve a dispute between these two parties. Both parties made application. The landlord had applied for an order of possession and a monetary order for unpaid rent. The tenant had applied to cancel the notice to end tenancy and for more time to do so. The Dispute Resolution Officer granted the landlord's application and dismissed the tenant's application. The tenants have applied for a review of this decision and for more time to make this application.

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.

Although the applicants applied for an extension of time in which to file for review, because they applied within two days of receiving the decision, I find that an extension of time is unnecessary as they cannot be said to have filed beyond the statutorily prescribed timeframe which is based on receipt of the decision or order.

The applicants rely on sections 79(2)(a)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. Section 79(2)(b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. Section 79(2)(c) 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**

Were the applicants unable to attend the hearing because of circumstances that could not be anticipated and were beyond their control? Do the applicants have new and relevant evidence that could change the decision? Do the applicants have evidence that the Dispute Resolution Officer's decision was obtained by fraud?

### **Facts and Analysis**

The applicants attended the hearing on June 05, 2012. Therefore the tenants' application for review on the ground that they were unable to attend does not apply.

### **New and Relevant Evidence**

Residential Tenancy Policy Guideline #24 provides as follows:

*"New" evidence includes evidence that has come into existence since the arbitration hearing. It also includes evidence which the applicant could not have discovered with due diligence before the arbitration hearing.*

In order to successfully argue that a review hearing should be granted on the grounds of new and relevant evidence, the applicants must prove that there is new evidence that is relevant and that it was unavailable at the time of the hearing.

On the ground for review, that the applicants have new and relevant evidence that was not available at the time of the original hearing, the applicants state that an important document which is in the possession of the landlord was not presented at the hearing. The tenants state that this document which is a witnessed promissory note is important because it is referenced in a written contract between the two parties, which was entered into on April 24, 2012.

Based on the tenant's explanation above, I find that this promissory note was in existence prior to April 24, 2012 and was referred to during the hearing on June 05, 2012. Therefore this is not new evidence as it was available at the time of the hearing. In addition, this note was also referred to in the decision dated June 05, 2012.

I find that the tenants have not submitted any new evidence and therefore have failed to meet the criteria of the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

**Decision obtained by Fraud**

This ground applies where a party has evidence that the Dispute Resolution Officer's decision was obtained by fraud. Fraud is the intentional "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive".

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 applicants state that the landlord made false statements during the hearing and provided inaccurate numbers regarding unpaid rent. The tenants also added that the Dispute Resolution Officer ignored the contract entered into by the parties which provided information about the rent amounts owed by the tenant. The tenants state that during the hearing, the landlord would not admit that he did not provide rent receipts.

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.

With respect to the matter the tenant asserts is fraudulent, it was not a matter unknown to the tenants at the time of the original hearing.

It was in existence and could have been submitted at the original hearing. The tenants may disagree with the Dispute Resolution Officer's findings of fact, but they had an opportunity to respond to the landlord's evidence at the hearing.

The tenants have not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The tenants have 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.

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 applicants have failed to prove that the Dispute Resolution Officer's decision was obtained by fraud. Therefore, I find that the application for review on this ground must fail.

### **Decision**

For the above reasons I dismiss the application for leave for review.

**The decision made on June 05, 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: June 22, 2012.

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Residential Tenancy Branch