



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MNDC MNSD

### **Introduction**

This is an application by the Landlord for a review of a Decision rendered by a Dispute Resolution Officer (DRO) with respect to the Tenants' application for the return of a security deposit plus compensation equal to the amount of the security deposit. The Tenants were granted an Order for double the amount of the security deposit or \$1,000.00 pursuant to s. 38(6) of the Act as well as recovery of the filing fee of \$50.00 for the proceeding.

### **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 applied for a Review of the Decision dated July 24, 2012 on the 2<sup>nd</sup> and 3<sup>rd</sup> grounds.

### **Facts and Analysis**

As I understand the Landlord's argument in his written submissions in support of his review application, he is claiming that the Tenants either did not provide a forwarding address in writing at all or did not provide him with their letter dated May 9, 2012 containing their forwarding address when they claim that they did.

### **Decision**

1. **New and Relevant evidence:** In his written submissions in support of the Review application, the Landlord claims that he took no action to deal with the Tenants'

security deposit because he did not receive their forwarding address in writing. RTB Policy Guideline #24 (Review Consideration) says at p. 2 that a review may be granted on this basis if the applicant can prove **each** of the following:

- He or she has evidence that was not available at the time of the original hearing;
- The evidence is new;
- The evidence is relevant to the matter described in the initial application;
- The evidence is credible; and
- The evidence would have a material effect on the original decision.

I find that the Landlord cannot succeed on this ground because I find that this evidence is not new and was available at the time of the hearing. In particular, the Decision dated July 24, 2012 indicates that the Tenants gave “uncontested evidence” that they provided a forwarding address in writing in a letter dated May 9, 2012. Given that the Landlord attended the hearing, he would have had an opportunity to contradict this evidence but did not do so.

2. **Fraud:** In his written submissions in support of the Review application, the Landlord claims that the Tenants’ evidence that they gave him a forwarding address in writing was fraudulent. RTB Policy Guideline #24 says at p. 3 as follows:

“the application for review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. The Application must also show that the newly discovered and material facts were not known to the applicant at the time of the hearing and were not before the RTB.”

I find that the Landlord cannot succeed on this ground as he has provided no evidence to support his allegation that the Tenants’ evidence was fraudulent. Furthermore, I also find that the Landlord would have had the opportunity at the hearing to respond to the Tenants’ evidence that they gave a forwarding address in writing and therefore this evidence was not newly discovered by him but known to him at the time of the hearing.

In his Decision dated July 24, 2012, the DRO found that the Tenants had provided the Landlord with the letter dated May 9, 2012 containing their forwarding address however it does not indicate *when* they did so. This however, is a matter for a “Request for Clarification” application and not a ground for granting a review.

**Conclusion**

The Landlord's application for Review is dismissed pursuant to s. 81(b)(ii) on the grounds that it does not disclose sufficient evidence of a ground for the review. Consequently, the Decision made on July 24, 2012 remains 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: July 31, 2012.

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Residential Tenancy Branch