



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** MNR OPR

### **Introduction**

The Tenant has applied for a review of the Decision and Orders of an Arbitrator dated November 28, 2012. The Decision and Orders granted an *order of possession and a monetary order to the Landlord*.

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 sections 79(2)(a)(b) and (c) of the *Residential Tenancy Act* (the "Act").

### **Facts and Analysis**

#### **Unable to attend**

I dismiss the Tenant's application on the first ground, as the Decision and Orders were granted through the direct request process. There is no participatory hearing held in this process, rather it is a proceeding done by written application only, and the Arbitrator was satisfied that the Tenant was served with Notice of the direct request proceedings in accordance with the provisions of the Act.

#### **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Dispute Resolution Officer,
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant states that he has “ *Photos of the house and things that were supposed to be fixed eg (black mould, leaks in the ceiling, unsafe stairs and electrical). I have roughly 16 photos as evidence*”. The tenant has filed photographs of the alleged problems inside the rental unit.

The Arbitrator made a decision based on the fact that the tenant was served a notice to end tenancy on November 16, 2012 and had up to five days from receipt of this notice to pay rent or dispute the notice, and failed to pay rent within the required timeframe. Therefore the Arbitrator found that the tenant had accepted that the tenancy ended on the effective date of the notice and granted the landlord an order of possession.

The tenant has not listed nor provided any evidence that is relevant to the decision taken and has not demonstrated how this evidence would have changed the decision of the Arbitrator

Even if I accept the tenant’s evidence as new evidence, I find that providing testimony on the condition of the rental unit, would not have changed the decision of the Arbitrator.

Section 81(1) (b) (iii) of the Act 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. Accordingly, I find that the application for review on this ground must fail.

I find that the tenant has not filed any new evidence that is relevant to the decision and therefore 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 Arbitrator'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 burden of proving this issue is on the person applying for the review. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

On the grounds that the decision and order were obtained by fraud, the tenant states that the landlord falsely testified that he had served the tenant with a notice to end tenancy. The tenant also states that the landlord does not want to fix the home or pay utilities.

In this decision under review, dated November 28, 2012, the Arbitrator indicates that he was satisfied that the notice of end tenancy was served in accordance with the *Residential Tenancy Act*, by posting it on the door to the rental unit, on November 13, 2012 at 3:42 p.m. and that this service was witnessed by a third party.

Based on the decision dated November 28, 2012, I find that the notice to end tenancy was served on the tenant. Therefore the tenant's allegations that the landlord provided false testimony regarding the service of the notice to end tenancy, are unfounded. 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 Arbitrator 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.

**Decision**

**The decision made on November 28, 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: December 12, 2012.

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Residential Tenancy Branch