



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** CNC

### **Introduction**

On November 01, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to cancel a notice to end tenancy. The Arbitrator upheld the notice to end tenancy. The tenant 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 sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). 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**

Does the tenant have new and relevant evidence that was not available at the time of the hearing? Does the tenant have evidence that the Arbitrator's decision was obtained by fraud?

### **Facts and Analysis**

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

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

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the 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.

It is up to a party to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in an arbitration hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be evidence.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

"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. New evidence does not include evidence that could have been obtained before the hearing took place.

Evidence that "would have had a material effect upon the decision of the Dispute Resolution Officer" is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has attached a letter from a Registered Psychologist that describes his assessment of the tenant during visits on October 01 and 29.

Upon review of the letter that the tenant has filed as new evidence, I find that the letter refers to events that took place prior to the hearing. This letter could have been obtained and filed into evidence to be considered during the hearing. Therefore, I find that this is not evidence that was unavailable for the hearing.

The applicant has failed to prove that he has new and relevant evidence that was not available at the time of the hearing 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". Intentionally false testimony would constitute fraud, as would making changes to a document either to add false information or to remove information that would tend to disprove one's case.

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 burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted. 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the tenant has provided a handwritten statement which rambles and is difficult to read and understand. In this statement the tenant states "*I don't no, if it's frod, but incorrect*" The tenant has attached two letters of support from other residents.

Based on the tenant's statement, I find that the tenant himself is not sure whether the decision was obtained by fraud and therefore I am unable to determine what portion of the decision, the tenant believes is fraudulent. The letters of support do not prove that the decision was obtained by fraud. The tenant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. 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. Therefore, 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 applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

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. Accordingly, for all the above reasons, I find that the application for Review on this ground must also fail.

Therefore, **I dismiss the application for Review and confirm the original decision dated November 09, 2012.**

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: November 21, 2012.

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Residential Tenancy Branch