



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: MNDC RPP

### Introduction

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 tenant applies for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing.
- A party has evidence that the director's decision or order was obtained by fraud.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the issues raised can be dealt with under the provisions of the Legislation that allow an Arbitrator to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or reasons;
- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the an Arbitrator should be set aside or varied;
- the application is frivolous or an abuse of process;

- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

## **Issues**

Has the applicant supplied sufficient evidence to show that the decision/order was obtained by fraud?

### **Decision Obtained by Fraud**

This ground applies where a party has evidence that the an 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." 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. Fraud may arise where a witness has deliberately misled the an Arbitrator by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the an Arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the an Arbitrator, and that that evidence was a significant factor in the making of the decision. 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 Arbitrator and from which the an Arbitrator 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. If the an Arbitrator 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 Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

**Facts and Analysis**

The Decision/Order under review is a decision to grant the tenants a monetary Order in the amount of \$3,000.00 for compensation for damage or loss.

In response to the instruction to list “Describe or list the evidence which is considered to be fraudulent” the applicant submits that the tenant did not have the goods he states were lost and that the landlord has a witness who can attest to this. Further, that the tenant did not make the rental payments he says he made.

I find that the applicant has failed to prove new and material facts, or newly discovered and material facts, which were not known to him at the time of the hearing, and which were not before the Dispute Resolution Officer 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.

Overall the application does not disclose sufficient evidence of a ground for review, nor does the application disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the Dispute Resolution Officer should be set aside or varied.

The original decision and orders dated February 4, 2013 stand.

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: February 21, 2013

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Residential Tenancy Branch

