



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

### Introduction

On February 28, 2013, a hearing was conducted to resolve a dispute between these two parties. Both parties had made application. The Arbitrator dismissed the tenant's application and granted the landlord an order of possession and a monetary order. The tenant has applied for a review of this decision

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.

### Issues

Does the applicant have new and relevant evidence that was not available at the time of the hearing? Does the applicant 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.

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.

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 provided a recording of a conversation with the landlord in which the landlord said “*I’m serving you*”. The tenant states that the recording has a date and time. The tenant does not explain the relevance of this evidence nor does she explain why it was not available at the time of the hearing

In the decision dated February 28, 2013, the Arbitrator has described in detail, the discussion around the service of documents by the landlord to the tenant. The Arbitrator found that the landlord had attempted service in accordance with the *Act* and he further found that the tenant’s admitted refusal of service was a choice she made.

The recording provided by the tenant was probably made prior to the hearing and therefore is not new evidence. I find that even if the tenant had filed this evidence prior to the hearing, it would have not changed the decision. The Arbitrator determined that the landlord had acted in accordance with the rules of procedure.

### **Decision obtained by Fraud**

This ground applies where a party has evidence that the Arbitrator 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”.

A party who is applying for review on the basis that the Arbitrator’s decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator, and that that evidence was a significant factor in the making of the decision.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant states that rent is \$525 per month and not \$500.00. The tenant is at liberty to apply for a correction to the amount of the monetary award. An alleged miscalculation is not grounds for a review hearing.

The applicant adds that the landlord committed fraud by making false statements about the date of the service of the notice to end tenancy. The tenant states that she did not receive a notice in January as alleged by the landlord, but received one in February. During the hearing, the Arbitrator addressed this argument that the tenant put forth and decided that the landlord served the tenant with the ten day notice on January 04, 2013.

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. In this case, the Arbitrator preferred the evidence of the landlord.

The tenant also states that the landlord wants to end the tenancy ever since she fell on his property and that she has always paid rent. Again, the tenant does not explain how this information was fraudulently used to get the desired outcome.

The Arbitrator based his decision on Section 46 of the *Residential Tenancy Act*, which allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

And Section 46(5) states that if a tenant who receives a notice under Section 46 does not pay the rent or file an application for dispute resolution within 5 days the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

With respect to the matters the tenant asserts are fraudulent, these matters were not unknown to the tenant at the time of the original hearing. They were in existence and could have been discussed during the hearing. The tenant may disagree with the Arbitrator findings of fact, but he had an opportunity to respond to the landlord's evidence at the hearing. The Arbitrator made his decision based on the testimony of both parties and section 46 of the *Residential Tenancy Act*.

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.

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.

Accordingly, for all the above reasons, **I dismiss the application for Review and confirm the original decision dated February 28, 2013.**

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: March 20, 2013

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Residential Tenancy Branch