



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes MNR, FF

### Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

### Applicant's Submission

The application for review consideration states the decision should be reviewed on the grounds of new and relevant evidence and fraud.

For the ground of new and relevant evidence, the tenant provided copies of text messages which she claims prove that she paid part of her rent by providing childcare for another tenant who was to pay \$500.00 to the landlord rather than give her a salary. The tenant stated that these text messages were unavailable at the time of the hearing because she did not know that the landlord would like about having received additional monies from the other tenant.

The tenant also provided copies of photographs of the residential property showing that another occupant had once lived in the lower floor of the home in question. The tenant did not explain why these photographs were unavailable at the time of the hearing or why they were relevant.

The tenant alleged that she did not receive "any info from Landlord, to be

submitted", which I understand to mean that she did not receive copies of the landlord's evidence. The tenant alleged that the tenant living in the lower suite moved into the rental unit and paid the landlord \$2,000.00 for that unit.

### Analysis

The decision clearly shows that the facts were not in dispute. Ms. Woods recorded that both parties agreed that the tenant had breached the fixed term agreement, that the rental unit was empty as of the date of the hearing and that the tenant owed the landlord \$1,500.00 in rent for December.

The tenant claimed in her application for review that she was told to be quiet and therefore could not explain her position to the arbitrator. However, it is clear from the decision that the tenant agreed with the matters at issue in the landlord's claim.

I find that because the tenant agreed at the hearing that she owed \$1,500.00 and that the unit was empty, she cannot now claim that the landlord obtained the decision through fraud.

While the tenant may have had an arrangement with another occupant to pay \$500.00 of the amount owing, the text messages submitted do not prove that. Rather, the tenant made that assertion and the female landlord advised that neither she nor the male landlord knew of an additional amount having been paid. The tenant may have a claim against the other occupant if they indeed had a contractual arrangement whereby the other occupant was to pay the landlord \$500.00 on the tenant's behalf, but that claim must be made in another forum as it does not fall within the jurisdiction of the Act.

I find that the evidence submitted by the tenant could have been made available at the time of the hearing and in any event does not prove that the landlord received any monies paid by another occupant on the tenant's behalf. I further find that as the tenant agreed with the amounts owed, she is precluded from now claiming that she has evidence which contradicts her testimony at the hearing.

I find that the tenant has not proven that the evidence is either new or relevant and I find that she has not proven that the landlords obtained the decision by fraud.

### Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on March 07, 2013 are confirmed.

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 25, 2013

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Residential Tenancy Branch