



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes CNC, CNR, OLC, OPC, OPR, 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 2 grounds – that the tenant has new and relevant evidence that was not available at the time of the hearing and that the decision or order was obtained by fraud.

The tenant supplied a letter from H.K., the individual identified in the original decision as a sub-tenant, in which she stated that she had paid February rent to D.L. but that he had not asked her for March rent. The letter also alleged that D.L. had acted illegally and unprofessionally. The tenant also provided a text message from H.K. in which she stated that the March rent had not been picked up.

In support of his fraud allegation, the tenant provided a series of text messages between himself and a third party in which the third party stated that the landlord was planning to rent the unit to someone else. The tenant alleged that the landlord had lied to the tenant and to H.K., stated that the landlord's lawyer had him evicted on a technicality and stated that the landlord did not give him a copy of evidence supplied to the Arbitrator.

### Analysis

In order to succeed on the first ground for review, that there is new and relevant evidence, the tenant must prove that the evidence could not have been made available at the time of the first hearing and that it is relevant to the issues before the Arbitrator. The tenancy ended because the landlord had not received the total amount of rent due in the month of March. The March 27, 2013 decision shows that the tenant agreed that he had not paid the entire amount of rent to the landlord and the letter and text message submitted with this application show that H.K. did not pay the balance owing for March either. The original Arbitrator found that it was the tenant's responsibility to pay rent to the landlord and that the landlord and H.K. did not have a contractual relationship whereby she would be obligated to pay rent directly to him. I find that the tenant's evidence serves to reinforce the basis on which the Arbitrator made the decision and proves again that the full amount of rent was not paid in the month of March. I find that this evidence would not have changed the outcome of the hearing and for that reason; I dismiss the application for review on this ground.

In order to succeed on the second ground for review, the allegation of fraud, the tenant must prove that the decision was obtained by fraud. Again, the Arbitrator determined that the landlord had grounds to end the tenancy because the tenant had not paid the full amount of rent owing for March. Even if the landlord had plans to re-rent the unit to another party, it would not have changed the Arbitrator's decision as those plans in no way affected the amount of rent payable by the tenant to the landlord. The tenant was not evicted on a technicality; rather, he was evicted on the basis of his own admission that he did not pay the full amount of rent due to the landlord in the month of March, nor did his sub-tenant make any payments to the landlord. While the landlord should have provided a copy of any documentary evidence to the tenant in advance of the previous hearing, the Arbitrator did not require any of that evidence to make his decision. Rather, he had the testimony of the tenant that he had not paid the full amount of rent due in March. I find that the decision was not obtained by fraud and accordingly I dismiss the application for review on this ground.

### Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on March 27, 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: April 09, 2013

---

Residential Tenancy Branch

