



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute codes:** FF MNSD

### Introduction

This is an application by the landlord for a review of the decision of the Dispute Resolution Officer dated April 29, 2013.

Section 79(2) of the *Residential Tenancy Act* states that a party to the dispute may apply for a review of the decision. The application for review must contain reasons to support one or more of the following grounds for review:

- a. a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. a party has new and relevant evidence that was not available at the time of the original hearing.
- c. a party has evidence that the director's decision or order was obtained by fraud.

In this application, the landlord has applied for review under the ground of fraud (c).

### Issues

Is the applicant entitled to a review of the decision based on the ground indicated?

### Facts and Analysis

With respect to the ground put forward by the landlord that the decision was obtained by fraud, I find that the landlord apparently took issue with the fact that the tenant had made an application for the return of the security deposit without having previously provided the landlord with a written forwarding address. The landlord pointed out that the tenant's claim that the address was provided was fraudulent. I find that, the landlord's objection to the tenant's testimony had been expressed during the hearing and was considered by the arbitrator. In the decision the Arbitrator noted:

*"The landlord states that the Tenant was required to send a forwarding address in writing and to make a request for return of the security deposit and this was never done."*

However, after considering the landlord's testimony based on the evidence, the arbitrator determined that:

*"the Landlord had the Tenant's forwarding address in December 2012."*

The landlord also testified that he had been given permission by the other co-tenant to retain a portion of the deposit. However, section 38 of the Act provides that only a tenant's written permission is valid and the landlord had the opportunity to furnish this documentary evidence prior to the hearing.

I find that the landlord's allegation of fraud in this application for review consideration merely consisted of arguments that the landlord already had an opportunity to put forward during the hearing. The position of the landlord and tenants were in evidence and were presented to the arbitrator during the hearing.

I find that it is a principle of natural justice that each party in a dispute is always at liberty to give his or her testimony as they see fit to do. In a hearing, each person is free to advocate and provide the most compelling arguments to support their position. I find that during the original hearing, both the landlord and the tenant were given the opportunity to state their own case and to refute the other party's testimony and evidence. An Application for Review Consideration is not to give one party a second opportunity to reargue the case.

In support of the Request for Review Consideration, the landlord pointed out that, he had received information from the Residential Tenancy Branch that supported his position and caused him to handle the matters in a specific manner. The landlord stated that he had also attended a hearing in the past with a similar fact situation which was handled differently by another arbitrator and the landlord asked for the following:

*"I would like to request If you could please review the procedures provided by the Arbitrator in this previous hearing. Please also review my application based on these rules and procedures I was provided. Otherwise I would not have waited until the hearing date to resolve the dispute and pay double the amount of the security deposit."*

In every dispute between two parties, each participant has a fair opportunity to present their case and to refute the position and evidence put forth by the other party. The findings and decision made by the arbitrator with respect to any dispute is based solely on the evidence placed before them by persons who have standing in the case. The arbitrator is not authorized to give consideration to other cases, opinions nor communications involving persons who are not parties to the dispute being heard. Moreover, it would be contrary to natural justice and unfairly prejudicial to give

evidentiary weight to extraneous matters that transpired outside of the parameters of the matter under dispute.

While it is clear that the landlord has taken serious issue with the findings made and the outcome of the hearing, that the applicant disputes the other party's version of the "facts", and disagrees with the conclusion reached by the hearings officer, does not serve to make this a case of fraud under the Act.

I find that, in this instance, the landlord has not produced sufficient evidence in the application to establish that fraudulent actions had been perpetrated by the tenant affecting the outcome of the hearing. For this reason, I reject the ground of fraud put forth by the landlord to justify a review of the decision.

#### Decision

I dismiss the application for review consideration and confirm the original decision and order of April 29, 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: May 17, 2013

---

Residential Tenancy Branch