



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

### Introduction

On May 22, 2013 a hearing was conducted to resolve a dispute between these parties. The tenants had applied to set aside a Notice to End Tenancy for cause. The Arbitrator granted an Order of Possession in favour of the landlord. The tenants have applied for a review of this Decision and Order.

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.

### Issues

The applicants rely on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). That the party has new and relevant evidence that was not available at the time of the original hearing and that the party has evidence that the arbitrator's decision or order 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 has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Arbitrator
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicants have new and relevant evidence that was not available at the time of the original hearing, the applicants have submitted a letter from the landlord asking the tenants for help. The tenants testify that it was not available at the time because the tenants did not know they had to defend these allegations and were only defending the eviction and what pertained to that. The tenants have also submitted Hydro bills and state Re: major inconveniences already subjected to. The tenants submit that they also have pictures to show their “work” but have no time to submit them because they are on a phone. The tenants refer to the Residential Tenancy Policy Guideline regarding window standards at beginning of tenancy.

I am not satisfied that this evidence is relevant to the Order of Possession or the grounds on which this Order was issued. I am not satisfied that the tenants could not have provided this evidence at the hearing and I do not see that this evidence would have a material effect on the decision of the Arbitrator. Consequently I find that the application for review on this ground must fail.

### **Decision Obtained by Fraud**

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

Fraud may arise where a witness has deliberately misled the 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 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. 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 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.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant alleges that the landlord committed fraud and changed what he said to what was in the evidence package. The tenant alleges that the landlord made false accusations about verbal abuse, verbal outbursts and the tenants did not want to sign a letter to help the landlords against a maintenance person. The tenants submit that the landlord knew this evidence was false as the landlord was making things up to make the tenants look bad. The landlord used a personal letter and made things up after the landlord reviewed the tenants' evidence. The tenant submits that the landlord used false information to get the desired outcome. The tenants had not received any written warnings only intents to enter and their response letters were articulate about why they refused the new windows. There was no communication from the landlord about the

tenants concerns; the tenants submit their letters show they tried to resolve this with the landlord. The tenants submit it is all about the windows which are a major renovation and that the landlord did not inform the tenants of a situation that needed correction.

The tenants have provided a written statement outlining a review of evidence and a number of utility bills concerning bills before the hot water heater repair.

I have reviewed the submissions made by the tenants at length however I find the application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. The applicants have failed to prove that a fraud was perpetrated. I find the tenants' application for review on this ground is more on the basis of rearguing the matter as the tenants were in attendance at the hearing and had opportunity to dispute the landlord's claims, evidence and testimony at that hearing. Accordingly, I find that the application for review on this ground must fail. 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.

#### Decision

The tenants' application for review is dismissed.

The decision and Order made on May 22, 2013 stands.

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: June 13, 2013

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Residential Tenancy Branch