



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** ET

### **Introduction**

The Decision/Order under review is a decision on the Landlord's application for an early end to tenancy and an Order of Possession. The Landlord's application was granted and the Landlord was provided an Order of Possession pursuant to the provisions of Section 56 of the Act.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides 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 following 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.

The Tenants apply for review on the second ground set out above.

### **Issues**

Do the Tenants have **new and relevant** evidence that was not available at the time of the original hearing?

### **Facts and Analysis**

In their Application for Review Consideration, the Tenants provide a copy of a BC Hydro bill dated May 16, 2013; a copy of bank statements for April and May, 2013; and a written submission, which states:

"Additional Witness Statement:

We have a witness who can testify that he has visited our home on multiple occasions and that he saw no evidence of the allegations made against us. He has been on a remote camping trip in the BC Interior since before we were served notice of the dispute resolution hearing on June 6<sup>th</sup>, without access to phone or internet. Our previous discussions with the RTB office led us to believe the hearing scheduled for June 20<sup>th</sup> could be adjourned until he was back in the area and could attend the hearing, and we are unclear as to why the Dispute Resolution Officer denied this request.”

(reproduced as written)

The Tenants also write, “Prior to the hearing, we were unaware of civil forfeiture (sic) or proceeds from illegal activity are a concern in this matter.”

### **New and Relevant Evidence**

Leave may be granted on this basis if the applicants can prove that:

- They have **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 Dispute 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.

The Landlord’s Application for Dispute Resolution, which the Tenants received on June 6, 2013, clearly indicates that the Landlords were seeking to end the tenancy early because of marijuana being grown at the rental unit.

It is up to a party to prepare for a Dispute Resolution Hearing as fully as possible. Parties should collect and supply all relevant evidence at the Hearing. “Evidence” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a Hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence.

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 Dispute Resolution Hearing. It also includes evidence which the applicant could not have discovered with due diligence before the Hearing. New evidence does not include evidence that could have been obtained before the Hearing took place.

I dismiss the Tenants’ Application for Review for the following reasons:

1. The BC Hydro bill is not new evidence. It was in existence at the time of the Hearing on June 20, 2013.
2. The bank statements were also in existence at the time of the Hearing on June 20, 2013.
3. The Arbitrator considered the Tenant’s application for an adjournment during the Hearing on June 20, 2013, and dismissed their application, giving reasons. If the Tenants require clarification, their remedy is to file a Request for Clarification. An Application for Review Consideration is not an opportunity to re-argue a case.

The original Decision and Order dated June 21, 2013, are therefore confirmed.

### **Conclusion**

The Tenants’ Application for Review Consideration is **dismissed**.

**The original Decision and Order dated June 21, 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: June 27, 2013

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Residential Tenancy Branch