



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNSD

### Introduction

On May 28, 2013 Arbitrator XXXXX provided a decision on the cross Applications for Dispute Resolution in which the landlord sought compensation for damage to the rental unit and the tenant sought return of her security deposit. The hearing had been conducted on May 28, 2013.

That decision granted the tenant double the security deposit less an amount granted to the landlord for one area of wall repair. The landlord did not request an extension of time to apply for Review Consideration.

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.

The landlord submits in her Application for Review Consideration that that she has new and relevant evidence that was not available at the time of the original hearing.

### Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision of May 28, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision or order is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of May 28, 2013 the issues before the Arbitrator were related to the landlord's claim for damage to the rental unit and the tenant's claim for her security deposit. I find the decision the landlord is requesting a review on do not relate to the matters identified above and as such the landlord was allowed 15 days to file her Application for Review Consideration.

From the landlord's submission she received the May 28, 2013 decision on June 6, 2013 and filed her Application for Review Consideration with the Residential Tenancy Branch on June 10, 2013 (4 days after receipt of the decision). I find the landlord filed her Application for Review Consideration within the required timelines.

The landlord submits in her Application for Review Consideration that she has new and relevant evidence that was not available at the time of the hearing. In response to the direction on the Application to "List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant" the landlord lists as follows:

1. New breakdown cost of letter from contractor
2. Tenant attached stickers & mirrors balcony entrance of the biggest living room wall. Tenant should removed before she move out. Therefore I didn't have much choice of painting whole wall.
3. Hidden scratches behind the TV stand wall.

In the letter from her contractor he confirms that he was out of the country between April 28, 2013 and June 5, 2013. In his letter he goes on to state: "The longer wall in the living room beside the balcony door had been covered by decorative stickers and mirrors by the tenant in about 4 square feet area which had to be removed and removing was not possible without a damage to the wall and also there were some more scratches on this wall."

However, the decision of May 28, 2013 stipulates that the landlord had no evidence to prove the condition of the rental unit at the start of the tenancy. By definition, this means that the landlord cannot prove that the tenant altered the wall in any way, including by adding stickers or mirrors, during the tenancy.

Upon a further review of the file for the original hearing and the decision itself notes that the landlord did not complete a move out condition inspection report and as such, I find that she can also not provide any evidence of the condition of the rental unit at the end of the tenancy.

The decision also states that the landlord testified that she had only looked at a few things when they did the move out inspection and that she had been distracted by the tenant and her friend talking and noticed the problems later on.

I find it unlikely that a landlord who was conducting an inspection to determine the condition of her own property at the end of a tenancy would be so distracted when inspecting a 452 square foot rental unit that she would not have seen stickers and mirrors on the wall right near the balcony doors.

And while the landlord's contractor's letter indicates it was the tenant who had placed the stickers and mirrors on the wall, neither the landlord nor the contractor provided any proof as to how the contractor would possibly know it was the tenant who had done this.

In a handwritten notation on the copy of the May 28, 2013 decision that the landlord provided with her Application for Review Consideration the landlord notes that the new tenant moved in on March 31, 2013 at 10:30 a.m.

Neither the landlord nor contractor indicated when the contractor first saw the rental unit. As such I find the landlord has failed to provide any evidence that would confirm the contractor would be able to provide evidence that it was this tenant who placed stickers or mirrors on the wall; that they had not been there prior to the tenancy; or that the new tenant had not put them on the wall.

As a result, I find the landlord has established that she has new evidence that was not available to her until after the hearing, however, she has not provided any evidence to that would change the outcome of the original hearing, because it was based on the landlord's failure to provide evidence of the condition of the rental unit at both the **start** and the **end** of the tenancy.

Section 81 of the *Act* stipulates that the director may dismiss an Application for Review Consideration if the application:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;
3. Discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied; or
4. Is frivolous or an abuse of process.

### Decision

For the reasons noted above, I dismiss this Application for Review Consideration.

The decision made on May 28, 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 12, 2013