



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD

### Introduction

The original dispute resolution hearing on the application of the landlords was held on May 10, 2013, and a Decision was issued on May 27, 2013, dismissing the landlords' application for a monetary order, and granting the tenants a monetary order of \$375 for recovery of their security deposit.

This is a request by the landlords for a review of that original Decision.

The landlords applied for a review on the grounds that they were unable to attend the hearing due to circumstances that could not be anticipated and were beyond their control and that they have evidence that the Decision was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

### Issues

Have the applicants for review provided sufficient evidence to support the indicated grounds for review?

### Facts and Background

#### *Unable to attend the hearing-*

In their application for review, the applicants/landlords submitted that they had intended to attend the hearing; however they were traveling in the US and contended that "the wonderful world of cellular must have put me behind a mountain" at the scheduled hearing time.

The landlord further stated that she now believes that their agent who did attend the hearing was not fully informed as to whether there were renovations being performed on the rental unit. The landlord contended that their agent gave incorrect information as there are no renovations being performed, according to the landlords' submission.

#### *Evidence the Decision was obtained by fraud-*

As written evidence to support their claim, the landlords took exception to the evidence submitted at the hearing by the tenants, which apparently went uncontradicted by the

landlord's agent. The evidence pertained to the tenants notice that they were ending the tenancy, which the landlord said was not submitted.

### Analysis on Review

#### *Unable to attend the hearing-*

It is my finding that the applicants/landlords have not shown that they were unable to attend the original hearing due to circumstances that could not be anticipated or were beyond their control. In fact, the landlords were represented at the hearing on their application by their agent. Residential Tenancy Branch Policy Guideline #26, states that the agent at the hearing may speak for the party and present that party's documentary evidence and witnesses.

As an agent appeared for the landlords, I conclude that the agent had full authority to act for and speak on behalf of the landlords at the hearing, with full awareness of the facts and circumstances as given to him by the landlords. Instead the landlords are arguing with their own agent who represented them, not the respondents.

I also find that the landlords have submitted insufficient evidence that the fact they were traveling could not be anticipated or beyond their control, as the landlords have not submitted that the travel was for emergency purposes. In fact, according to the landlord, she purchased a roaming plan for the US, which suggested that the travel was for leisure purposes and planned in advance.

Due to the above, I find the landlord failed to prove that they were unable to attend the hearing due to circumstances that could not be anticipated or were beyond their control as I find they did attend the hearing through their representative. I therefore am not willing to grant a new hearing under this ground claimed by the landlords.

#### *Evidence the Decision was obtained by fraud-*

Residential Tenancy Policy Guideline #24 provides, among other things, that 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.

The arguments of the landlords in their application for review were the arguments the landlords' agents should have made at the hearing which the agent attended, had the agent been fully informed by the landlords.

I find that the landlords' submissions in this application for review consideration merely consist of re-arguments that the landlords' agent should have presented during the hearing. It is evident that the landlords have taken issue with the outcome of the hearing; however the fact that the applicants/landlords disagree with their own agent and the conclusion reached by the Arbitrator does not amount to fraud.

Therefore I find that the landlords have not presented evidence to support their application.

Decision

Due to the above, I dismiss the landlords' application for review and confirm the original Decision and monetary order in favour of the tenants both dated May 27, 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: June 21, 2013

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Residential Tenancy Branch