



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes CNR, MT, MNDC, OPR, OPC, MNR, FF

### Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states 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 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.

### Applicant's Submission

The application for review consideration states the decision should be reviewed on the grounds of new and relevant evidence and fraud.

With respect to new and relevant evidence, the applicants claimed that because she was trying to find a new place to live, move and work, they did not have time to "put together a more detailed application" and did not include photographs in their original claim. The tenants also included copies of emails and an insurance receipt.

The tenants allege that the decision was obtained by fraud because the landlord lied by making it seem as though the rental unit was in good shape at the outset of the tenancy, because the landlord had not performed requested repairs, because the landlord completed the "entrance review", which I take to mean the move-in condition inspection, without the tenants and because the landlord denied knowing about the water problem until just prior to the eviction.

The tenants also claimed that they had paid part of the rent that the landlord was awarded, although they did not produce proof showing that the rent was paid.

## Analysis

In order to succeed in this application on the grounds that they have new and relevant evidence, the applicants must prove that the evidence is both new, in that it was not available at the time of the hearing, and relevant in that it is directly related to the tenants' claim. I find that the evidence in this case cannot be characterized as new as it should have been available through the exercise of due diligence at the time of the hearing. Everyone who makes an application for dispute resolution is subject to similar time pressures and it is incumbent upon the applicant to include with their claim all of the evidence that can be made available to prove the claim.

The evidence submitted by the tenants all relates to their monetary claim. The arbitrator who conducted the hearing made her decision on the tenants' monetary claim based on the tenants' failure to prove any legal basis upon which the landlord could be held liable for their moving, insurance, storage, utility hookup, medical or laundry costs. Further, the arbitrator found that the tenant had failed to submit proof that the tenants had incurred the expenses claimed. I find that had the arbitrator had the evidence of the tenants before her at the time of the hearing, it would not have made any difference to the outcome of the hearing as the evidence does not consist of invoices showing expenses incurred or proof that there is a legal basis on which the landlord can be held responsible for those expenses.

Section 81(1)(b)(iii) of the Act allows the director to dismiss an application for review if the application 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. As I have found that the decision would not have been different even if this evidence had been before the arbitrator, I find that the application for review on this ground must fail.

As for the tenants' claim that the decision was obtained by fraud, the tenants' allegations again are not relevant. The tenants' claim was dismissed because the tenants failed to prove that they suffered any actual economic loss and because they failed to prove that the landlord should be held legally responsible for their choice to move and to store their belongings.

The tenants did not provide proof that their rent was paid and in the absence of such proof, I am unable to find that the decision to award the landlord unpaid rent was based on fraud.

I find that the tenants have failed to prove that either the decision to dismiss their claim was based on fraud or that the decision to award the landlord unpaid rent was based on fraud. I therefore find that the application for review on this ground must fail.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order made on May 24, 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 24, 2013

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Residential Tenancy Branch

