



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Stroshin Management  
and [tenant name suppressed to protect privacy]

## **REVIEW CONSIDERATION DECISION**

Dispute Codes CNC, MNDC, OLC, RP, RPP, RR, O

### 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 ground of new and relevant evidence that was unavailable at the time of the hearing.

The new evidence submitted by the applicant is a doctor's note which states that the applicant reported to his physician that he experienced a heightened sense of anxiety and sense of panic upon receiving the landlord's evidence the day before the hearing and therefore was unable to prepare for the hearing or to respond effectively.

### Analysis

In order to be successful on this ground for review, the applicant must prove that he has evidence which is both new in that it was unavailable at the time of the hearing and relevant, in that it is directly related to the matter at issue in the hearing. I accept that the tenant's evidence is new, but I find that the tenant has not met the burden of proving that it is relevant.

The tenant appears to believe that because the landlord's evidence was served late, it should have been excluded. The Residential Tenancy Rules of Procedure do not give an arbitrator leave to exclude evidence simply because it has not been served in a timely manner. Rather, the remedy

for having been served late is an adjournment to give the person receiving the late evidence adequate opportunity to respond.

Because the tenant did not tell the arbitrator at the hearing what documents he believed he needed to properly respond to the landlord's evidence and because he apparently did not request an adjournment but merely demanded that the evidence be excluded, the arbitrator proceeded with the hearing.

In his application for review, the tenant has still not indicated what submissions he would have made at the hearing had he been given adequate opportunity to respond to the landlord's evidence.

I find that the evidence that the tenant experienced heightened anxiety is not directly relevant to his claim and I find that without a suggestion of how the tenant would have responded had he not had experienced that anxiety, there is no reason to order a new hearing.

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.

For the reasons listed above, I find that the application for review must fail.

### Conclusion

I dismiss the application for review consideration. The decision made on May 28, 2013 is 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*.

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Residential Tenancy Branch