



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

**Dispute Codes**      MND, MNSD, MNDC, 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 ground of new and relevant evidence that was not available at the time of the original hearing. In her application for review, the applicant lists three pieces of evidence:

1. Email notifications dated February 04 and February 26, to the tenant regarding setting up an appointment to conduct a move out inspection. The applicant states these notes were not available prior to the hearing due to the crash of her computer in March 2013. The applicant has attached copies of these notes.
2. A statement of payment to the person who cleaned the unit. The applicant states that she did not realize that she needed this statement and that money did not exchange hands because money was owed by the cleaning person to the landlord.
3. Video taken by cell phone. The applicant states that the phone was broken and she was unable to retrieve the video prior to the hearing. However since then she found someone who was able to.

## **Analysis**

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

- he or she has evidence that was not available at the time of the hearing;
- the evidence is new,
- the evidence is relevant to the matter before the Arbitrator,
- the evidence is credible, and
- the evidence would have had a material effect on the decision.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

It is up to a party to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence to the arbitration hearing. 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.

I note that in her application for review, the applicant has listed evidence that was in existence at the time of the hearing. The applicant states that her computer crashed in March 2013 and therefore she did not have proof of having given the tenant two opportunities to conduct the move out inspection. The hearing was on Jun 27, 2013 and therefore the applicant had at least three months to retrieve this information. In addition, the landlord did not inform the Arbitrator during the hearing, of this information being unavailable due to a computer crash.

The landlord could have obtained a receipt to support her monetary claim prior to the hearing but did not so. During the hearing the landlord informed the Arbitrator that she had taken photographs and a video, but failed to inform the Arbitrator that the reason for not filing this evidence was that the phone was broken and she was unable to retrieve the video.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence. All the evidence filed by the applicant with her application for review, was regarding events that she was aware of and had already taken place prior to the time of the hearing. The evidence was in existence and could have been presented at the original hearing.

I find that the tenant has not submitted any new evidence and therefore has failed to meet the criteria of the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicants are free to apply for judicial review in the Supreme Court.

### **Conclusion**

I dismiss the Application for Review Consideration. The original decision and order(s) made on June 27, 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: July 25, 2013

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Residential Tenancy Branch

