



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

### Introduction

This is an application by the tenant for a review of a decision and orders of the director dated July 4, 2013.

The tenant applied for a review on the ground she has evidence that the director's decision or order was obtained by fraud.

### Issues

Has the tenant provided sufficient evidence to establish that the director's decision or order was obtained by fraud?

### Facts and Analysis

#### *Original Hearing and Decision*

The landlord applied through the direct request process for an order of possession and a monetary order pursuant to a notice to end tenancy for unpaid rent. Based on the documentary evidence submitted by the landlord, the arbitrator found that the tenant was deemed served with the notice to end tenancy on June 17, 2013, and that the tenant failed to pay the full outstanding amount within five days of having been served with the notice. Accordingly, the arbitrator granted the landlord an order of possession and a monetary order for the outstanding rent.

#### *Tenant's Submissions*

In the application for review, the tenant indicated that she did not apply to dispute the notice because the landlord told the tenants they could stay, and "it's just paper and law to serve you, I will come to pick up rent and sign and pay Hydro on 26<sup>th</sup> of June 2013." The tenant also indicated that the hydro is in the tenant's name, even though the tenant is only responsible for 70 percent of the rent, and the landlord pays the tenant back for the remaining 30 percent of the rent.

### *Analysis on Review*

I find that if the landlord waived the notice, this evidence may have had a material effect on the arbitrator's decision. Further, the requirement that the tenant have hydro in her name and be required to collect the balance of the hydro from the landlord may be an unconscionable term or may have an effect on the amount of rent the tenant in fact owed at the time the notice was issued. I therefore find that a review hearing is warranted.

### Decision

I order that the decision and orders dated July 4, 2013 be suspended until a review hearing has been completed.

A review hearing is a new hearing of the original application. Notices of the time and date of the hearing are included with this review consideration decision for the tenant to serve to the landlord within 3 days of receipt of this decision. The tenant must also serve a copy of this decision to the landlord.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an information officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020  
Victoria: 250-387-1602  
Elsewhere in BC: 1-800-665-8779

The landlord must also ensure that the tenant has been served with a copy of the application for dispute resolution and all evidence they submitted for the original direct request hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the arbitrator and the evidence of the party in attendance at the review hearing.

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 22, 2013

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