



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

### Introduction

On May 27, 2013 Arbitrator XXXXX provided a decision on the cross Applications for Dispute Resolution with parties seeking monetary orders. The hearing had been conducted on May 21, 2013.

That decision granted the landlord a monetary order in the amount of \$1,353.18; ordered the landlord was allowed to retain the security deposit; and dismissed the tenant's Application. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act* says 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.

The tenant submits in his Application for Review Consideration that he has evidence that the director's decision was obtained by fraud.

### Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision of May 27, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that the landlord obtained the decision based on fraud.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision or order

is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of May 27, 2013 the issues before the Arbitrator were related to the landlord's claim for damages and unpaid rent after the tenancy had ended and the tenant's claim for return of the security deposit. As such, I find the decision and order the tenant is requesting a review on allowed 15 days for the tenant to file his Application for Review Consideration.

From the tenant's submission he received the May 27, 2013 decision on June 7, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on June 21, 2013 (14 days after receipt of the decision). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant submits that there are the following 4 pieces of information that were submitted to the original hearing by the landlord that was false:

1. The landlord's chronology of events is false and misleading;
2. The landlord claimed that he mailed the dispute resolution packaged by registered mail but that he did not;
3. The landlord misrepresented the agreements the two parties had; and
4. The landlord omitted important and relevant details regarding agreements they had made with each other.

In regard to the tenant's assertions regarding the chronology of events I note that the issue raised by the tenant is specific to the service of documents related to this hearing. The issue of service was dealt with extensively in the original hearing, however, there is no indication that there was an issue between the specific dates of May 13, 2013 or May 14, 2013.

The decision notes that the landlord served the documents in question to the tenant by registered mail. In his submission for his Application for Review Consideration the tenant has included a copy of the Notice of Dispute Resolution Hearing for the landlord's Application for Dispute Resolution. The tenant notes that the date printed at the top of the document from a fax machine was May 13, 2013.

The tenant has provided no indication of who this faxed document had been sent from or to on May 13, 2013. The number recorded on the faxed document is an internal fax number used by the Residential Tenancy Branch (RTB) to send documents to Service BC agents to provide to parties in a dispute resolution. As such, the date it was sent from the RTB to the Service BC location the landlord would have requested was May 13, 2013. I find this does not provide any evidence the landlord received the document prior to May 14, 2013.

The tenant also wishes to “raise a red flag” as to why the landlord submitted his Application in one community instead of the community he lives in. While this raises the tenant’s suspicions I find it does not provide any evidence of fraud.

The tenant also submits that despite the landlord’s claim in the hearing that he served the tenant by registered mail the tenant states that the landlord served him with the hearing documents personally at his place of employment. The tenant submits that he was assisting clients at the time and he and his superior asked the landlord to leave his place of employment 5 times after he served the tenant with the documents.

I note that the tenant did not raise this concern during the hearing despite the extensive discussion on the service of documents. I also note that the tenant has provided no corroborating statements or affidavits from either the clients he was assisting or his superior to confirm this service. I find the tenant has provided no evidence to support his assertion that the landlord used a different method of service than recorded in the decision of May 27, 2013.

Further, I find the tenant has provided no evidence that the issue of service would have resulted in a different decision or outcome and the tenant was provided an opportunity to request an adjournment as a result of service issues which he declined.

In regard to the tenant’s assertion that the landlord misrepresented agreements made and that he omitted important and relevant details regarding agreements I find that these submissions are an attempt to reargue the case. A Review Consideration is not an opportunity to do so.

In this portion of his Review Consideration Application the tenant purports different positions on various agreements including the tenancy agreement. For example the tenant submits that rent was a \$1,270.00 per month despite the tenancy agreement submitted into evidence by the landlord that lists rent as \$1,395.00. Despite his claim the tenant has provided no evidence that rent owed per month was any different than what the tenancy agreement stated.

Further the tenant raised these issues in the original hearing and the Arbitrator preferred the documentary evidence of the tenancy agreement and rejected the tenant’s testimony regarding the terms of the tenancy agreement. As such, in the absence of any evidence to substantiate rent was different than that outlined in the tenancy agreement and May 27, 2013 decision, I find the tenant has failed to provide any evidence of fraud.

For the reasons noted above, I find the tenant has failed to establish the landlord obtained the decision and order by fraud.

### Decision

I dismiss the tenant's Application for Review Consideration.

The decision made on May 27, 2013 stands.

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 03, 2013