



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MND MNDC MNR MNSD

### **Introduction**

A Hearing was held on June 4, 2013, to deal with cross applications. The Landlord applied for a Monetary Order for damages, unpaid rent and utilities; for compensation for damage or loss; and to retain the security deposit in partial satisfaction of his monetary award.

The Tenant applied for the equivalent of double the amount of the security deposit pursuant to the provisions of Section 38(6) of the Act; and for recovery of the cost of the filing fee.

On June 4, 2013, a Decision was issued. The Landlord's application was dismissed **without leave to reapply** because the Landlord did not sign into the teleconference. The Tenant's application was dismissed **with leave to reapply** because he had not provided sufficient evidence that the Landlord was served with the Tenant's application. However, the Arbitrator ordered that the Landlord return the security deposit to the Tenants because the Landlord's application against the security deposit was dismissed.

The Landlord filed an Application for Review Consideration indicating that he received a copy of the Arbitrator's Decision on July 9, 2013, by mail.

Section 79(2) under the *Residential Tenancy Act* provides that a party to a 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 Landlord has filed his Application for Review under the first and second of the above grounds for review.

### **Issues**

1. Has the Landlord shown that he was unable to attend the Hearing due to circumstances beyond his control that were not anticipated?
2. Has the Landlord provided new and relevant evidence that was not available at the time of the original Hearing?

### **Background and Evidence**

In his Application for Review Consideration, with respect to the first ground, the Landlord states:

“I have been in Iran, because of election, overseas line suddenly did not work (were in international news).”

He lists the following testimony or additional evidence he would have provided if he were at the Hearing:

“New rental agreement (I didn’t know that he claimed that I personally live in Rental Condo and claim for Hydro bill). Passport stamps and sending this application from Tehran with registered mail.”

Under the second ground for review consideration, the Landlord lists the following new and relevant evidence:

“Copy of new tenant’s contracts from 11.04.2013 (already I have sent it with registered mail and file No but was not available at the Hearing. They had sent their claim to the dispute rental address (although they had my address in dispute application) which was already rented and it took long to be transferred to me.”

### **Analysis and Findings**

I have considered the Landlord’s submissions and provide the following findings with respect to each of the grounds for review.

### ***Unable to Attend***

The Act provides that it is the responsibility of the party applying for review to provide complete information, sufficient particulars and evidence in support of their request for review. I find insufficient information and evidence to conclude that the Landlord was not able to attend the conference because of circumstances that were unanticipated or beyond his control.

I find that the Landlord provided insufficient evidence that he was unable to call in to the teleconference because of the election. The Landlord indicated that there was a disruption of telephone service which was “in the news”, but did not provide documentary evidence of such a disruption on June 4, 2013.

### ***New and relevant evidence***

In consideration of a Review Application on the second ground I refer to Residential Tenancy Policy Guideline No. 24 which sets out the requirements that must be met for leave to be granted on the second ground. The policy states that leave may be granted on this basis if the Applicant can prove that (a) he or she has evidence that was **not available at the time of the original hearing**; (b) the evidence is **new**; (c) the evidence is **relevant to the matter which is before the Arbitrator**; (d) the evidence is credible; and (e) the evidence **would have had a material effect on the decision of the Arbitrator**. The Guideline states that **all of the above** criteria must be met before a Review will be granted on this ground.

I find that the Landlord provided no evidence that is either new or relevant. The tenancy agreement with the new tenants was in existence at the time of the original Hearing. However, more significantly, as noted above, the Guideline requires that the evidence be “relevant” and “would have had a material effect on the decision of the arbitrator”.

Upon review of the original decision in this matter it is clear that the Arbitrator’s Decision was not based on whether or not the Landlord lived at the rental unit. The Tenant’s cross Application was dismissed with leave to reapply because the Tenant failed to satisfy the Arbitrator that the Landlord had been served. The Arbitrator ordered the Landlord to return the security deposit because the Landlord was unrepresented at the Hearing and therefore the Landlord’s application to retain the security deposit was dismissed.

In light of the above, I find the Landlord has not provided evidence that the Decision would have been any different had the Arbitrator been provided the information submitted by the Landlord with this Application.

Having found the Landlord has not provided sufficient evidence or a basis to grant a new Hearing, this Application for Review is dismissed. The Decision and Order issued June 4, 2013, is upheld.

**Conclusion**

The Decision and Monetary Order issued June 4, 2013, stand and remain enforceable.

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 18, 2013

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Residential Tenancy Branch