



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

### Introduction

This Application was filed by the tenant on July 29, 2013, seeking a Review Consideration of the Decision and Order dated July 24, 2013 and having received that decision by mail on July 29, 2013. The Decision granted the landlord an order of possession effective on or before 1:00 p.m. on July 31, 2013.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 has applied on the first, second and third grounds.

### Issues

- Has the tenant provided evidence that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?
- Has the tenant provided evidence that the tenant has new and relevant evidence that was not available at the time of the original hearing?
- Has the tenant provided evidence that the director's decision was obtained by fraud?

### Facts and Analysis

The Application contains information under section C1, on why the tenant could not attend the original hearing held on July 24, 2013.

The tenant writes in her Application:

“was present for Hearing BUT Recovering from severe concution & I have mental disabilities I now have advocate to help me.”

[Reproduced as written.]

The Application contains information under section C2, on why the tenant has new and relevant evidence with respect to the hearing held on July 24, 2013.

The tenant writes in her Application:

“I have 5 More text the landlord gave me written & verbal permission to take my labour and cost of material off rent. Landlord Never served order.

\*Landlord accepted Rent for Aug 2013

\*Landlord did NOT serve me the Order. Just the desition letter.”

[Reproduced as written.]

The Application contains information under section C3, from the tenant alleging that the director’s decision was obtained by fraud.

The tenant writes in her Application:

“Landlord said I was trying to Sabatoge his sale of house. I have Done everything I can above and beyond to help him sell. LandLord Gave Me verbal & written permission to take my Labour & Material Cost off Rent. LandLord Lied about Giving Me 10% off Rent!

Landlord texted me with several different time’s giving me permission to take cost off my Rent and did not admit to that at Arbitration Landlord New he owed me more money that Rent was and neglected this fact! Landlord text me with permission I put on Rent cheques why I was 10% less!

Landlord lied to Arbitrator Regarding \$360.00 text stating he gave me 10% off Rent. He did this so he’d win I got completely taken for granted here. I have text to prove this he had NO evidence Landlord try’d making me look bad”

[Reproduced as written.]

The tenant submitted two pages related to an eye specialist, a photocopy of a photo of the tenant’s face and medical bracelet, seven pages of texts dated between June 13, 2013 and June 24, 2013, a photocopy of a money order from the tenant to the landlord in the amount of \$1,200.00 dated July 26, 2013, and a registered mail receipt. The tenant also submitted documents in evidence after filing her Application for a Review

Consideration which includes fourteen pages of texts dated July 30, 2013, and six more pages of texts dating between July 30, 2013 and July 31, 2013, in addition to a photocopy of a realtor business card.

### Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the first ground for Review, the tenant must prove, based on a balance of probabilities, that the circumstances that prevented them from attending the hearing (which was held by telephone conference call), were both unanticipated and beyond her control.

Policy Guideline 24, which deals with Review Considerations, sets out the following about this ground of Review:

“In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.”

[Reproduced as written.]

The tenant writes in her Application:

“was present for Hearing BUT Recovering from severe concution & I have mental disabilitys I now have advocate to help me.”

[Reproduced as written.]

Based on the above, the tenant did attend the hearing and has provided no evidence to support that she could not arrange for an advocate in advance of the hearing that took place on July 24, 2013. Therefore, **I dismiss** this portion of the tenant’s Application as she has provided no evidence to support that she was unable to attend the hearing for a reason that was both unanticipated and beyond her control. The tenant did attend the hearing and could have prepared in advance of the July 24, 2013 hearing by arranging

for an advocate to attend at the original hearing or request an adjournment from the Arbitrator during the hearing for the purpose of arranging for an advocate to assist her, neither of which the tenant provided evidence to support.

In order to be successful on the second ground for review, the tenant must prove that new and relevant evidence exists that was not available at the time of the original hearing. The tenant wrote:

“I have 5 More text the landlord gave me written & verbal permission to take my labour and cost of material off rent. Landlord Never served order.

\*Landlord accepted Rent for Aug 2013

\*Landlord did NOT serve me the Order. Just the desition letter.”

[Reproduced as written.]

The evidence submitted by the tenant consists of seven pages of texts dated between June 13, 2013 and June 24, 2013, a photocopy of a money order from the tenant to the landlord in the amount of \$1,200.00 dated July 26, 2013, and a registered mail receipt. The tenant also submitted documents in evidence after filing her Application for a Review Consideration which includes fourteen pages of texts dated July 30, 2013 and six more pages of texts dating between July 30, 2013 and July 31, 2013, in addition to a photocopy of a realtor business card. Based on the above, I find the tenant has not shown that she has new and relevant evidence that was not available at the time of the original hearing. Seven pages of texts are dated prior to the hearing and therefore could have been made available at the original hearing. The other fourteen pages of texts plus the additional six pages of texts are dated after the hearing took place and would not change the outcome of the original decision as the tenant agreed at the original hearing that “she owed \$2,600.00 in unpaid rent”. Furthermore, the tenancy ended based on the tenant failing to pay rent within five days of June 18, 2013 so texts received after June 23, 2013, five days after June 18, 2013, are not relevant. Therefore, **I dismiss** this portion of the tenant’s Application due to insufficient evidence.

In order to be successful on the third ground for Review, the tenant must prove, based on a balance of probabilities, that the director’s decision was based on fraud. The tenant writes:

“Landlord said I was trying to Sabatoge his sale of house. I have Done everything I can above and beyond to help him sell. LandLord Gave Me verbal & written permission to take my Labour & Material Cost off Rent. LandLord Lied about Giving Me 10% off Rent!

Landlord texted me with several different time's giving me permission to take cost off my Rent and did not admit to that at Arbitration Landlord New he owed me more money that Rent was and neglected this fact! Landlord text me with permission I put on Rent cheques why I was 10% less!  
 Landlord lied to Arbitrator Regarding \$360.00 text stating he gave me 10% off Rent. He did this so he'd win I got completely taken for granted here. I have text to prove this he had NO evidence Landlord try'd making me look bad"

[Reproduced as written.]

For the tenant to be successful on the third ground, the tenant must provide evidence that the director's decision was obtained by fraud. The tenant is alleging that the landlord lied during the hearing, however, failed to provide her evidence prior to the hearing and is attempting to have the matter reargued through the Review process by submitting evidence after the original hearing. It is important to note that the tenant submitted the original application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and as a result, the tenant was not only aware of the application because she was the person to apply for dispute resolution, but was also made aware that evidence to support her application was "important" as indicated on the original Notice of a Dispute Resolution hearing document given to her in advance of the original hearing. Therefore, the tenant's failure to submit evidence prior to the original hearing does not constitute the director's decision being obtained by fraud. Therefore, **I dismiss** this portion of the tenant's Application due to insufficient evidence to prove the director's decision was obtained by fraud.

As the tenant's application has been dismissed on all three grounds, the decision and order made on July 24, 2013, **stands and remains in full force and effect.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 08, 2013

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Residential Tenancy Branch