



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.*

### Introduction

This application seeks a review of a hearing conducted on July 22, 2013 on applications by both parties. The tenants have also requested an extension of the time limit to bring this application but the application is in time and an extension is not required.

The landlord had sought an Order of Possession and a Monetary Order pursuant to a Notice to End Tenancy served on June 12, 2013 for unpaid rent for June 2013.

The tenants had applied to set the notice aside and for a rent reduction and had paid the rent on June 13, 2013.

By the time of the hearing, the tenants had vacated the rental unit and the hearing dealt only with the landlord's monetary claim for rent or loss of rent for July 2013 as the tenants had not given vacant possession until part way through the month and had texted the landlord that they would not vacate until July 29, 2013..

In her decision of July 23, 2013, the arbitrator found that with the late departure and need for cleaning, the landlord had no chance to re-rent the unit in July 2013 and awarded \$1,000 for the July 2013 rent.

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.

## Issues

In the present matter, the tenants claim to have new and relevant evidence.

## Facts and Analysis

While the tenants rely on the claim of new and relevant evidence, in fact they have submitted no evidence with this application for review.

The application simply states that its author thought that she was following the landlord's instructions and objected to the landlord's participation in ending the tenancy when an agent had been the primary contact.

Residential Tenancy Policy Guideline 25 says of new and relevant evidence that:

"A review may be granted on this basis if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision."

As the tenants have provided no evidence, I cannot grant a review hearing on this claim.

Moreover, section 81(b)(iii) of the *Act* empowers the director's delegate to dismiss an application for review in circumstances in which it:

"Discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied."

There was some argument at the original hearing as to whether the tenants vacated on July 5, 2013 as they claimed or whether a substantial amount of their belongings

remained in the rental unit on July 7, 2013 as the landlord claimed. However, there is undisputed evidence that the tenants remained in the rental unit several days into July 2013. That, in combination with the text message stating the tenants would remain until July 29, 2013, gave the arbitrator no reasonable conclusion other than to award the landlord the rent for July 2013.

Therefore, the application for a review hearing is dismissed.

### Decision

This application is dismissed and the decision and order issued on July 23, 2013 remain in force and effect.

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: August 16, 2013

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Residential Tenancy Branch