



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MNSD

### **Introduction**

This is an application by the landlord for a review of the decision of the arbitrator dated August 8, 2013.

Section 79(2) of the *Residential Tenancy Act* states that a party to the dispute may apply for a review of the decision. The application for review must contain reasons to support one or more of the following grounds for review:

- a. a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. a party has new and relevant evidence that was not available at the time of the original hearing.
- c. a party has evidence that the director's decision or order was obtained by fraud.

In this application, the landlord has applied for review under the ground of fraud (c).

### **Issues**

Has the applicant for review provided sufficient evidence to support one of the indicated grounds for review?

### **Facts and Analysis**

The landlord stated in the application for review consideration:

*"Tenant claimed he provided the address on the same day of inspection....This is false statement, he did not filled or provided his address in writing that day. He is hiding original inspection report which was given to him on inspection day (that had no forwarding address on it). The inspection report he is using as an evidence is landlord's copy and the address shown on that copy is filled by landlord once it was given on the phone by Tenant on March 19/2013. Chq was mailed on March 22 & we sent him another copy of inspection report which at that point had his address written on it by us. He agreed in writing on the inspection report unit needed professional cleaning and agreed the amount can be deducted from damage deposit....Also landlord received evidence less than*

*five days prior to the hearing as mentioned in decision by officer. We were not given enough time to prepare our argument by law.”*

(reproduced as written).

With respect to the ground put forward by the landlord that the decision was obtained by fraud, I find that the landlord is bringing up arguments that were, or should have been, put forth by the landlord during the hearing on August 8, 2013. The applicant is drawing attention to documents that were apparently submitted into evidence to be considered for the original hearing. In reference to these documents, the landlord is alleging that the evidence the tenant presented was fraudulent because the tenant misrepresented the date that the forwarding address was given to the landlord. According to the landlord, the tenant produced a copy of the inspection report, that was filled out and dated the end of the tenancy, but contained a forwarding address that was apparently written in, by the landlord, at a later date, not on the date that the move-out condition inspection was done. .

According to the landlord, the tenant falsely stated that the written forwarding address had been placed on the document during the move out condition inspection.

I find that, the above arguments could have been, and likely were, brought up in testimony during the hearing and presented by the landlord into evidence.

I find that the landlord's argument about the date the forwarding address was given and the late receipt of evidence were matters that were duly considered by the arbitrator, and the findings of the arbitrator are based on evidence provided.

Given the above, I find that the landlord's allegation of fraud in this application for review consideration merely consisted of arguments that the landlord already had an opportunity to put forward during the hearing.

The documents in question were in evidence and any testimony with respect to these documents and their content are considered to be matters that were validly before the dispute resolution officer during the hearing.

I find that, I am not at liberty to make an alternate finding on dispute issues that have been properly considered and decided by the arbitrator overseeing the original hearing.

In any case, I find that it is a principle of natural justice that each party in a dispute is always at liberty to give his or her testimony as they see fit to do. In a hearing, each person is free to advocate their own perspective and to provide the most compelling arguments to support their position.

I find that during the original hearing, both the landlord and the tenant were given the opportunity to state their own case and to refute the other party's testimony and evidence. The purpose of an Application for Review Consideration is not to afford one party a second opportunity to reargue their case or present the evidence a second time.

It is clear that the landlord has taken serious issue with the outcome of the hearing. However, the fact that the applicant disputes the other party's version of the "facts", and disagrees with the conclusion reached by the hearings officer, does not serve to make this a case of fraud under the Act.

Based on the evidence in this application for Review consideration, I find that the landlord has not produced sufficient evidence to establish that fraudulent actions had been perpetrated by the tenant that affected the outcome of the hearing. For this reason, I reject the ground of fraud put forth by the landlord to justify a review of the decision.

#### Decision

I dismiss the application for review consideration and confirm the original decision and order of August 8, 2013.

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 23, 2013

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Residential Tenancy Branch