



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

### Introduction

The Tenant applies for review of the decision on the basis that the Tenant has new and relevant evidence.

### Issues

Is the Tenant entitled to a review hearing?

### Facts and Analysis

The Tenant submits that testimony of the Tenant's mental health worker was excluded by the Arbitrator without reasons given during the hearing or in the decision. The Tenant submits that since this was excluded it is therefore evidence that was not available at the time of the hearing.

Section 79(2) of the *Residential Tenancy Act* (the "Act") provides that a decision may be reviewed only on one or more of the following grounds:

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.

As the Tenant submits that the evidence was excluded at the Hearing, it follows that in order to exclude the evidence it must have been available at the time of the Hearing. As this evidence was available at the hearing, the Tenant's submission of new and relevant evidence does not fall within the grounds allowed under the Act for review purposes. The Tenant is therefore not entitled to a review.

It may be that the exclusion of evidence without reasons is a matter related to issues of procedural fairness and natural justice. Unfortunately for the Tenant, these issues are not grounds included under the Act for the purposes of a review and this may be a matter more properly suited to judicial review.

Decision

The Tenant is not entitled to a review. The decision made on August 13, 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: September 05, 2013

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Residential Tenancy Branch