



# 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.*

On September 16, 2013, the Residential Tenancy Branch received an Application for Review from XXXXXXXX, Tenant(s).

Subject:

File Number: XXXXXXXX,  
Decision dated: September 3, 2013  
Rental Unit: XXXXXXXXX,  
XXXXXXX, BC

Other Party: XXXXXXXXX, Landlord(s),

### Introduction

On September 3, 2013 Arbitrator XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to an order of possession and monetary order for unpaid rent. The Application was adjudicated through the Direct Request process and a participatory hearing was not convened.

That decision granted the landlord an order of possession and a monetary order in the amount of \$440.00. The tenant requested an extension of time to apply for Review Consideration.

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.

The tenant submits in her Application for Review Consideration that she has evidence that the director's decision was obtained by fraud.

## Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided if she is entitled to have the decision of September 3, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that the landlord obtained the decision based on fraud.

## Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is received by the party, if the decision relates to an early end of tenancy, an order of possession for the landlord or tenant; unreasonable withholding of consent by a landlord for assignment or subletting; or for a landlord's notice to end a tenancy for non-payment of rent..

From the decision of September 3, 2013 the issues before the Arbitrator were related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision and order the tenant is requesting a review on allowed 2 days to file her Application for Review Consideration.

From the tenant's submission she received the September 3, 2013 decision on September 13, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on September 16, 2013 (1 business day after receipt of the decision). I find the tenant has filed her Application for Review Consideration within the required timelines.

I note that in the section of the Application for Review Consideration that the tenant indicated that she was seeking more time to apply for Review Consideration she states that her reason that she was unable to apply for Review Consideration within the two days was because: "receiving documents after the date".

As I have found she did not need to apply for an extension I have not considered what this statement means or how it relates to the tenant's reasons for seeking an extension to apply for Review Consideration.

The tenant submits that the landlord obtained the decision based on fraud. In her Application the tenant states that:

"the rent was paid in full which I recived the recipt for. Verbal reasons for eviction were because she did not approve of my company & I leave my apt. Sometimes at 11:00 p.m."

The tenant goes on to say “\$440.00 is not owed \$220.00 is owed from the month of may.” And “Saying I didnt pay when I did & have the receipt for it. I can leave my apt. Anytime regardless of her feelings about appropriate times to leave.”

Despite stating twice that she has a receipt for the payment of rent in her Application the tenant did not provide a copy of a receipt for any such payments. Nor did the tenant elaborate as to what rent she had paid. She acknowledges that she had not paid rent in the amount of \$220.00 for the month of May.

As such, the tenant has not paid the rent in full and even if a new hearing were to be granted the landlord would still be entitled to an order of possession since the tenant did not pay the rent of \$220.00 that she acknowledges as unpaid within 5 days of receiving the 10 Day Notice to End Tenancy allowed.

Further, the tenant has provided no evidence to confirm any amount of rent owed to the landlord. When raising the issue of fraud it is not sufficient to simply state information, the party making the claim must provide evidence to establish even a potential that fraud occurred.

As the tenant has provided only statements despite having the ability to provide some documentary evidence such as a rent receipt I find the tenant has failed to establish the landlord obtained the decision based on fraud.

### Decision

For the reasons noted above, I dismiss the tenant's Application for Review Consideration.

The decision made on September 3, 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 24, 2013

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Residential Tenancy Branch