



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

### Introduction

The application for dispute resolution was originally brought under the Residential Tenancy Act, by the tenant. A hearing was held on October 1, 2013, without the respondent to determine the tenant's claim for a refund of the tenant's security deposit.

According to the written decision issued on October 11, 2013, the tenant had testified that they had personally served the landlord with the notice of hearing and application for dispute resolution on June 27, 2013. However, the landlord did not appear.

The tenant was successful in the October 1, 2013 hearing and received a Monetary Order based on the tenant's testimony. On November 8, 2013 an application for Review Consideration of the decision was submitted by the landlord, requesting a review based on all three grounds under section 79 of the Act.

Section 79 of the Residential Tenancy Act states that 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 original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

### Issues

Is a review of the October 11, 2013 decision warranted based on the ground that the landlord could not attend due to circumstances that could not be anticipated and were beyond the landlord's control?

Is a review warranted based on the ground that the respondent has new evidence that could not be submitted at the time of the hearing?

Is a review of the decision warranted on the ground that the decision was obtained by fraud?

### Analysis

The landlord's application for review consideration stated they were never served with a Notice of Hearing, as claimed by the tenant during the hearing, and as a result the landlord was deprived of the opportunity to attend the October 1, 2013 hearing to present evidence.

The landlord's Application also stated that new evidence that would have been submitted to prove that the tenant did not provide the landlord with any written forwarding address and therefore the landlord could not make an application to claim against the tenant's security deposit for damages and rental arrears.

The landlord's Application for Review Consideration contained written testimony from the landlord, alleging that the tenant gave false testimony about providing the landlord with a forwarding address and that the tenant had personally served the landlord with the Notice of Hearing.

I note that, during the original hearing, the proof of service for the Notice of Hearing was only based on the tenant's verbal testimony that they served the landlord with the hearing documents in person. Accordingly I find that, in the absence of documentary proof, there exists a possibility that this landlord was never served with the documents in accordance with the Act and therefore could not attend due to circumstances that were unanticipated and not within the landlord's control.

Given the above, I find that one or more of the grounds put forward by the applicant in this Application for Review Consideration have been successfully established sufficient to warrant a review of the decision rendered on October 11, 2013.

Section 82 of the Act states that, unless the arbitrator dismisses or refuses to consider an application for a review, they must review the decision: (a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any, (b) by reconvening the original hearing, or (c) by holding a new hearing. After a review, an arbitrator may confirm, vary or set aside the original decision.

Pursuant to *Section 79(2)* of the *Residential Tenancy Act*, I hereby order a rehearing of the original dispute resolution proceeding. Further written submissions and additional evidence from the parties is permitted.

I Order that a new hearing be conducted at which point the merits of the circumstances in the tenancy, including the allegations raised in this Application for Review, can be addressed by both parties.

**Notices of hearing are included with this review consideration decision for the Landlord to serve to the Tenant within 3 days of receipt of this decision.**

Each party **must** serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020, **Victoria:** 250-387-1602,

**Elsewhere in BC:** 1-800-665-8779

The Decision and Order made on October 11, 2013, are hereby suspended pending the outcome of the new hearing.

### **Conclusion**

A re-hearing is ordered based on the landlord's application for Review Consideration on the ground that the respondent landlord could not attend due to circumstances beyond the landlord's control.

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: November 18, 2013

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Residential Tenancy Branch