



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION**

Dispute Codes: CNC LAT LRE MNDC MT O OLC

### Introduction

This matter came before me as a result of an application by the tenant for an order for a new hearing on a matter for which a final decision was issued on August 29, 2013. The tenant applied on 2 bases under section 79(2):

1. A party has new and relevant evidence that was not available at the time of the original hearing.
2. A party has evidence that the director's decision or order was obtained by fraud.

### Facts and Analysis

The tenant claims to have new and relevant evidence which was unavailable at the time of the hearing. The tenant claimed that she had photographs and attempted to submit faxed copies of those photographs, but the fax simply included multiple blank pages, which I assume to be the photographs. A clarification to the decision issued on September 27, 2013 in which the Arbitrator confirmed that she did not accept any evidence submitted after the original July 17, 2013 hearing date. The tenant's evidence confirms that she understood that the Arbitrator had advised the parties that she would not accept evidence arriving between July 17, 2013 and the conclusion of the hearing on August 28, 2013.

The tenant's application does not indicate when the photographs in question were taken, but a letter submitted with the application shows that a third party took photographs on August 10, 2013. Rule 14.1 in the Residential Tenancy Rules of Procedure clearly states that no additional evidence may be submitted after the dispute resolution proceeding unless the Arbitrator has granted permission and has not formally concluded the proceeding. In this case, the Arbitrator had not yet concluded the proceeding on July 17, but she specifically denied permission to submit additional. As the Arbitrator specifically excluded additional evidence, I find that the review process cannot be used to escape the specific direction of the Arbitrator. I therefore find that the

application for review on the ground that the tenant has new and relevant evidence must fail.

Turning to the second ground for review, that the decision was obtained by fraud, the tenant argued that the Arbitrator assumed the landlord was telling the truth, that the landlord submitted photographs labeled as being from the tenant's unit which could not have been taken there, that the landlord claimed she had not received a registered letter when the tenant had proof that the landlord had received it (the tenant did not submit this proof), that the landlord did not ask to see the rental unit and that the Arbitrator failed to ask the landlord why she denied the tenant access to the unit.

Much of the tenant's argument appears to be an allegation that the Arbitrator made the wrong decision and did so because she found the landlord to be credible when the tenant alleges that the landlord is not. This is not a ground for review. If the tenant believes that the Arbitrator erred in her decision, she may file a judicial review in Supreme Court.

Residential Tenancy Policy Guideline #24 provides that "The application package must show the newly discovered and material facts were not known to the applicant at the time of the hearing and were not before the RTB." The tenant did not explain why she did not point out to the Arbitrator during the hearing that the landlord's photographs in question were not taken in the rental unit. I find that the tenant should reasonably have known that the photographs in question did not depict the rental unit, particularly since she had a significant amount of time to review the photographs since the hearing was adjourned for more than a month, and that she should have brought this to the attention of the Arbitrator at the hearing.

I find that the tenant has not proven that the decision was obtained through fraud and accordingly I find that the application for review on this ground must fail.

### Conclusion

The application for review is dismissed. The decision issued August 29, 2013 is confirmed.

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