



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOBLAW PROPERTIES WEST INC.  
and [tenant name suppressed to protect privacy]

## **REVIEW CONSIDERATION DECISION**

Dispute Codes CNL, CNC

### Introduction

This matter involves an Application for Review Consideration made by the Tenant. The Tenant applies for Review Consideration of a Decision and Order made on October 7, 2013, granting the Landlord an order of possession based on a two month Notice to End Tenancy issued by the Landlord for the Landlord's use of the rental unit property (the "Original Decision").

In the Original Decision the Arbitrator found the Landlord had proven on a balance of probabilities that a two month Notice to End Tenancy for the Landlord's use of the property was given in good faith, and that the Landlord had all the necessary permits and approvals required by law to demolish the rental unit. The Landlord is a large commercial entity and has shown that they always intended to develop this property, and now have satisfied the Arbitrator they have the necessary permits and approvals to demolish the property and this requires an end to the tenancy.

### Preliminary Issues

The Tenant has applied for more time to make this Application. In his Application the Tenant writes he received the Decision by mail on October 29, 2013; however, that is crossed out and the Tenant has written November 5, 2013, by "Processor". This leads me to conclude that the Tenant was personally served by process server on November 5, 2013. Under the Act the Tenant has two days to apply for Review Consideration on a matter involving an order of possession. The Tenant has applied on November 5, 2013. Therefore, I find the Tenant has filed on time and that no additional time is required for him to make this Application.

### Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that a party to the dispute may apply for a review of a 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 applies on the second and third grounds above.

### Issues

1. Does the Tenant have new and relevant evidence that was not available at the time of the original hearing?
2. Does the Tenant have evidence that the director's decision or order was obtained by fraud?

### Applicant's Submission

Under the ground of new and relevant evidence, the Tenant' Application states the Arbitrator,

“... failed to consider jurisdiction, and where the Act does not apply. The Arbitrator failed to consider that there was an Evergreen Rental Contract in place, with only the Tenant able to terminate the Tenancy, unless development was ready to proceed, which is not the case.” [Reproduced as written.]

Under the ground of fraud, the Tenant's Application alleges that one of the lawyers who provided written submissions and appeared at the hearing for the Original Decision, “... should know he can't give credible evidence on behalf of other people who were there.” The Tenant goes on to allege that one of the witnesses, who is shown in the Decision as having appeared on behalf of the Landlord at the Original Hearing, was not allowed to testify for the Tenant.

The Tenant further states that the, “Rental Act should not and cannot apply here.” The Tenant also states that since the Tenant sought compensation in excess of \$25,000.00, as he apparently claims the Landlord or the witness for the Landlord described above

gave the house at the rental unit property to the Tenant, and therefore the matter should be referred to the Supreme Court of Canada.

The Tenant has also included a copy of a draft letter he apparently wishes to send to the Supreme Court of Canada seeking a judicial review. I note for the information of the Tenant that a judicial review in this matter would have to first be referred to the Supreme Court of British Columbia, then to the British Columbia Court of Appeal, prior to seeking leave at the Supreme Court of Canada.

### Analysis

Based on the above, the record of the Original Decision, and on a balance of probabilities, **I dismiss the Application for Review Consideration without leave to reapply.**

On the ground of new and relevant evidence, the Tenant has not provided any new or relevant evidence that was unavailable to him at the time of the hearing for the Original Decision.

Policy guideline #24 to the Act explains a review may be granted on this ground if the applicant can prove each of the following:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter described in the initial application;
- the evidence is credible; and
- the evidence would have had a material effect on the original decision.

[Reproduced as written.]

In this instance the Tenant argues the Arbitrator failed to consider jurisdiction as his new evidence. In fact, the Arbitrator considers jurisdiction on pages 3, 4, 5, 6 and 7 of the Original Decision.

It appears from this submission that the Tenant does not agree with the Arbitrator's findings regarding interpretation of the tenancy agreement and the Act, and is attempting to re-argue the case, or attempting to put forward further or additional arguments he could have made at the hearing for the Original Decision. This is not the purpose of a Review Consideration. For these reasons, I find the Tenant has failed to prove he has new and relevant evidence not available to him at the time of the original hearing.

On the ground of fraud, policy guideline 24 sets out that,

“Fraud is the intentional use of false information to obtain a desired outcome.

Fraud must be intended. An unintended negligent act or omission is not fraudulent.

...

The application for the review consideration must be accompanied by sufficient evidence to show that false evidence on a material matter was provided to the RTB, and that this evidence was a significant factor in the making of the decision. **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 application package must contain sufficient information for the person conducting the review to reasonably conclude that the new evidence, standing alone and unexplained, supports the allegation that the decision or order was obtained by fraud.**

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

1. information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it. “

[**Emphasis** added.]

In this instance, I find the Tenant has insufficient evidence to prove the Original Decision was obtained by fraud. There are no newly discovered or material facts not known to the Tenant at the time of the original hearing. The Tenant again attempts to re-argue the jurisdiction of the Act, in opposition to the findings of the Arbitrator. It appears that the Landlord had a witness who the Tenant hoped would support the Tenant’s assertions; however, the Tenant alleges that there was testimony the witness did not give and this was prejudicial to the Tenant’s status under the tenancy agreement. I find the Tenant has insufficient evidence of fraud. Furthermore, I find the Tenant is simply trying to reargue the case, which is not the purpose of a Review Consideration under the Act.

Lastly, having reviewed the Application of the Tenant, the evidence and the Original Decision, I find the Application discloses no basis on which the decision or order should be set aside or varied, even if the submission of the Tenant here were accepted (which they are not).

Conclusion

I dismiss the Application for Review Consideration for the above reasons.

**The Original Decision made on October 07, 2013, including corrections or amendments made after, is confirmed, and remains in full force and effect.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 12, 2013

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Residential Tenancy Branch

