



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

### Introduction

This is an application filed by the landlord for review of an Interim Decision of an Arbitrator dated December 9, 2013. Pursuant to the decision the landlord's 10 day notice and 1 month notice to end tenancy were cancelled, the tenant was ordered to "reduce future rent by \$200.00 in full satisfaction of the claim," and the tenant was ordered to change the locks to the unit. Further, in the Interim Decision the Arbitrator determined that the landlord's claim for "damages to the unit and for compensation" would be addressed at the "adjourned hearing." The adjourned hearing is scheduled to commence at 1:00 p.m. on February 18, 2014.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides 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 time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

### Issues

The application for review is filed on the basis of grounds # 2 and # 3.

### Facts and Analysis

**Does the landlord have new and relevant evidence that was not available at the time of the original hearing?**

Leave may be granted on this ground only if an applicant can prove as follows:

- the evidence submitted was not available at the time of the original hearing;

- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible;
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when an applicant has evidence which meets all five criteria will a review be granted on this ground.

There appear to be 2 aspects to this part of the landlord's application. First, the landlord seeks an order requiring the tenant to "allow for a new inspection date for photographs and to have a witness present on my behalf." Enclosed with the application is a copy of the landlord's letter to the tenant dated November 19, 2013, in which the landlord recounts the events of November 18 & 19, 2013 that surround the landlord's attempts to inspect the unit with a witness and to take pictures.

In this regard, the attention of the parties is drawn to the statutory provisions set out in section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**. Further, the parties are referred to Residential Tenancy Policy Guideline # 7, which speaks to "Locks and Access," and provides in part as follows:

Where a valid notice has been given by the landlord it is not required that the tenant be present at the time of entry.

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Where a tenant prevents a landlord entering, after a valid notice of entry has been given, the landlord may apply for an Order for entry at a specified time and for a specified purpose. The Arbitrator can, at that time, determine if the reason for entry is a reasonable one.

An application for review is not intended as an opportunity to apply for an order, such as the one referred to immediately above. The landlord has the option of applying for such an order by way of an application for dispute resolution.

The second aspect of this part of the landlord's application concerns the matter of heat provided to the rental unit. Documents submitted by the landlord include, but are not limited to, Fortis statements for the periods "from September 19 to October 21, 2013; October 21 to November 18, 2013 and November 18 to December 17, 2013," as well as "Weather Temperature / reading evidence for September and October 2012 and September [and] October 2013." I find that only a limited portion of this information was not available at the time of the original hearing. Further, I find that the remaining portion

of the information which was not available at the time of the original hearing would not have had a material effect on the decision of the Arbitrator. In the result, the application must be dismissed on this particular ground.

**Does the landlord have evidence that the decision and orders were obtained by fraud?**

A party applying for review on grounds that the decision was obtained by fraud, must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator, and that the evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision was obtained by fraud. Fraud must be intended. A negligent act or omission does not constitute fraud. The burden of proving fraud is on the party applying for review.

In summary, the landlord claims as follows:

The decisions [were] obtained by fraud as the tenant gave several statements that were untruthful with no supporting documents or witnesses to prove her case. The tenant knew that the central heat was being provided however chose to be of a malicious nature and gave false information to get the desired outcome.

In regard to heat, in the decision the Arbitrator found in part as follows:

Given the Landlord's evidence that the heat was not turned on until mid October 2013 and considering the reasonable expectation to require some heat by this point, I find that the Tenant has established that the Landlord failed to provide heat as required under the tenancy agreement. Given the lack of evidence such as witness or temperature reading evidence and considering the Landlord's evidence that the heat has been turned on, I find that the Tenant has failed to establish a continuing loss of heat since mid October 2013. For the loss of heat I find that the Tenant has established a rent reduction of **\$100.00**.

I note that the amount awarded to the tenant is only a limited portion of what the tenant sought, which was "a rent reduction equivalent to \$100.00 per month for the months [of] October, November and December 2013 and until the heat is turned on."

Having considered the landlord's submission in concert with the related findings in the Arbitrator's decision, I find that the landlord has failed to meet the burden of proving that the decision or orders were obtained by fraud. This aspect of the application must therefore be dismissed.

Finally, section 81 of the Act speaks to **Decision on application for review**, in part:

81(1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(b) the application

- (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
- (ii) does not disclose sufficient evidence of a ground for the review,
- (iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied, or...

### Decision

For the reasons set out above, the application for review is hereby dismissed. The Interim Decision dated December 9, 2013, and the orders issued therein, are hereby 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: December 30, 2013