



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: FF MND OPB

### Introduction

On October 9, 2013 at 2:00 pm a conference call hearing was held in response to applications for dispute resolution filed by both the landlord and tenant for monetary compensation.

The Arbitrator noted in the decision for the hearing that the tenant failed to appear for the scheduled conference call and as a result the tenant's application was dismissed without leave to re-apply. The landlord was granted a Monetary Order and was allowed to keep the security deposit in partial satisfaction of the landlord's claim.

Division 2, Section 79(2) under the *Residential Tenancy Act* (referred to as the *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.

As a result, the tenant has applied for a review of the decision dated October 9, 2013 on the basis of all three grounds above.

### Issues

- Was the tenant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?
- Does the tenant have new and relevant evidence that was not available at the time of the original hearing?
- Does the tenant have evidence that the decision was obtained by fraud?

## Facts and Analysis

Under the first ground on the review application, Unable to Attend, the tenant writes that he was unable to attend the hearing because he was sick, had a headache and had caught a cold. However no supporting documents were provided such as a note from a doctor or clinic.

Policy Guideline 24 to the *Act* explains that in order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both beyond the control of the applicant and not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. If the tenant was unable to attend due to being sick, he was under a legal obligation to confirm this through documentary evidence, but provided none. I find the tenant had no supporting evidence to establish he was unable to attend the hearing. In addition, the tenant might also have called into the hearing and requested an adjournment, or, the tenant might have had an agent call in and request this. As a result, I find that application on the first ground must fail.

Under the second ground on the review application, New and Relevant Evidence, the tenant writes that his rental suite was flooded and that he attempted to get evidence from the building strata to prove this but they were unwilling to provide this due to privacy reasons. The tenant provided an e-mail response from the building strata which was a response to an email the tenant had sent dated October 22, 2013. The e-mail response states that the documents cannot be provided to past tenants due to privacy reasons.

Policy Guideline 24 to the *Act* explains that a review may be granted 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.

The e-mail the tenant sent to the building strata, which was provided as evidence, was sent on October 22, 2013 which was after the hearing had taken place. The tenant has provided no explanation as to why he couldn't obtain this information before the hearing. As Policy Guideline 24 explains, new evidence does not include evidence that could have been obtained before the original hearing by properly preparing for the hearing. In addition the tenant has not provided any evidence to support a case of water flood; but instead has only provided evidence that he tried to obtain information to support his case after the hearing had taken place and after he had received the decision for the hearing. As a result, I find that the application on the second ground must fail.

Under the third ground on the review application, Fraud, the tenant writes that the security deposit is \$1,050 and not \$775 and maintains that the damages alleged by the landlord at the hearing were the result of flooding of the rental unit which the strata are failing to provide him with evidence of and that the landlord gave false information.

Policy Guideline 24 to the *Act* explains that fraud is the intentional use of false information to obtain a desired outcome and that 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 Residential Tenancy Branch (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.

I find that the tenant did not provide sufficient evidence to show that false evidence was provided on a material matter. I further find that the tenant has not provided any supporting evidence, aside from his accusation that the landlord gave false information, to enable a conclusion that the Decision was obtained by fraud. It appears the tenant simply wants to argue the matter because he did not attend the hearing. As a result, I find that the application for review on the third ground must also fail.

### Decision

For the reasons set out above, I dismiss the Application for Review of the tenant.

The decision and Order made on October 9, 2013, stands and remains in full force and effect.

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 01, 2013

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Residential Tenancy Branch