



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD O

On November 08, 2013, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for a monetary order. Both parties attended the hearing. The Arbitrator granted a portion of the landlord's application. The landlord has applied for a review of this decision.

Division 2, Section 79(2) under the *Residential Tenancy 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.

The applicant relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2) (b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. Section 79(2)(c) provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

### **Issues**

Does the applicant have new and relevant evidence that was not available at the time of the hearing? Does the applicant have evidence that the Arbitrator's decision was obtained by fraud?

### **Facts and Analysis**

#### **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

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

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

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant lists the following:

1. Invoice for repairs
2. Receipts for materials to replace damaged areas
3. Hydro bill

The applicant goes on to say that repairs were delayed due to the health issues of the new tenants and are currently in progress. The applicant has attached an invoice for the cost of labour which is dated November 15, 2013. The invoices attached are dated September 13, 18 and 24 and November 9 and 18. The Hydro bill is dated September 10, 2013.

Except for the invoice for labor and two receipts dated November 15, 08 and 18 respectively, all the other documents are dated prior to the hearing and could have been filed into evidence for consideration during the hearing on November 08, 2013.

“New” evidence includes evidence that has come into existence since the arbitration hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

On the ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, I find that the applicant has not provided any new evidence and therefore has failed to meet the test to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail. The landlord is at liberty to file an application for the cost of work conducted after the date of the hearing.

### **Decision obtained by Fraud**

This ground applies where a party has evidence that the Arbitrator's decision was obtained by fraud. A party who is applying for review on the basis that the Arbitrator's 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 that evidence was a significant factor in the making of the decision. The burden of proving this issue is on the person applying for the review. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

On this ground for review, that the Arbitrator's decision was obtained by fraud, the applicant states that during the hearing the tenant's representative provided false information about the condition of the rental unit at the end of the tenancy. The landlord states that the representative did not enter the unit and therefore did not observe the condition of the unit, yet testified about the condition of the unit. The landlord also states that the photographs that he filed into evidence for the hearing confirm his testimony that the suite was not left in good condition at the end of the tenancy.

With respect to the matters the applicant asserts are fraudulent, they were not matters unknown to the applicant at the time of the original hearing. They were in existence and could have been addressed at the original hearing. The applicant may disagree with the Arbitrator's findings of fact, but he had an opportunity to respond to the tenant's evidence at the hearing, regarding the condition of the rental unit at the end of tenancy.

The applicant has not provided me with new evidence to support the allegation that the decision under review was obtained by fraud. The applicant has not proven any new or newly discovered material facts and how that evidence could have been a significant factor in the making of the decision.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Arbitrator or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time.

The applicant is free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

The application discloses insufficient evidence that the decision under review was obtained by fraud; and therefore, fails to satisfy the inherent burden of proof. Accordingly, I find that the application for Review on this ground must also fail.

Therefore, **I dismiss the application for Review and confirm the original decision dated November 08, 2013.**

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 04, 2013

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Residential Tenancy Branch