



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNSD RPP

### Introduction

The original dispute resolution hearing on the cross applications of the tenant and the landlord was held on November 18, 2013, and a decision was issued on November 18, 2013, granting the tenant's application for monetary compensation comprised of her security deposit, doubled, for a total amount of \$725.

The decision of November 18 also granted the landlord's application for monetary compensation, in part, for a total amount of \$175, comprised of an administration fee of \$125 and the landlord's filing fee of \$50.

The original Arbitrator offset the landlord's monetary award of \$175 against the tenant's monetary award of \$725, and granted the tenant a monetary order in the amount of \$550.

This is a request by the tenant for a review consideration of that original decision.

The tenant applied for a review consideration on the grounds that she has new and relevant evidence that was not available at the time of the original hearing and that she has evidence that the decision was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

### Issue

Has the applicant for review provided sufficient evidence to support the indicated grounds for review?

### Facts and Analysis

*Evidence that the applicant has new and relevant evidence that was not available at the time of the original hearing-*

In her application for review consideration, the tenant contended that she has applied to the municipality where the rental unit is located to obtain records which would show the rental unit was an illegal suite, due to lack of code compliance. The tenant attached a copy of the response from the municipality, dated December 2, 2013, confirming her request under the *Freedom of Information and Protection of Privacy Act*.

Although not new evidence, the tenant also requested that the tenancy agreement placed into evidence for the original hearing be reviewed as there was no mention of the tenancy being for a fixed term.

Then tenant provided no explanation as to why the evidence was not submitted in advance of the hearing, as required by the application for review consideration itself.

Pursuant to Residential Tenancy Branch Policy Guideline 24, new evidence includes evidence that has come into existence since the dispute resolution hearing or evidence which the applicant could not have discovered with due diligence before the hearing.

In the case before me, the tenant submitted no evidence, other than a request for records, which I find could have been submitted well in advance of the hearing.

Additionally, I find whether or not the rental unit was an illegal suite is irrelevant to the issues considered by the original Arbitrator as an illegal suite does not invalidate the tenancy.

I therefore find the applicant/landlord has submitted insufficient evidence to support that she has new evidence that was not available at the time of the hearing or that any evidence she may have obtained through her request for records were relevant.

*Evidence the Decision was obtained by fraud-*

In support of this ground, the tenant recited that the landlord made a false statement when testifying that the suite was legal and ready for occupancy, which was not proven by any documentary evidence, according to the tenant.

The tenant argued that this submission by the landlord influenced the original Arbitrator into making the decision to award the landlord a lease break fee.

The tenant reiterated that the tenancy agreement was not for a fixed term, and that she should not be accountable for a lease break fee.

The tenant also submitted that during the hearing there was no mention of the landlord requesting their filing fee, although that request was made in their application. The tenant objected to being responsible for the landlord's filing fee as she herself was unable to pay her own filing fee.

In the case before, under the Policy Guideline, fraud may arise where a witness has deliberately misled the proceeding by the concealment of a material matter that is not known by the other party beforehand and is only discovered afterwards.

I do not find that to be the case here. The Arbitrator, in his decision, never mentioned any statement made by the landlord of the condition of the rental unit which would indicate an influence on his decision, only that the tenant by signing the tenancy agreement for a fixed term agreed to an administration fee of \$125 in the event the tenancy ended early. I find the original Arbitrator was well within his discretion as the decision maker to award the landlord an administrative fee.

It is clear from my review of the tenancy agreement that the tenant has misinterpreted her tenancy agreement when she argues that there was no fixed term. Section 4 of the tenancy agreement, signed by both parties, states that the term of the agreement was for a "ONE YEAR LEASE," commencing on February 1, 2013. In common language, this is a fixed term set to expire one year after the start date of the tenancy. Additionally at the conclusion of the one year, the tenancy was allowed to continue on a month to month basis, if so chosen. It is also important to note that the tenant and the landlord also placed their initials by this paragraph of the tenancy agreement acknowledging that understanding of this term.

As to the filing fee, I find the original Arbitrator followed section 72 of the Act, which allows an award of a filing fee, without any qualifying criteria.

I find it evident that the tenant has taken issue with the outcome of the hearing; however the fact that the applicant/tenant disagrees with the conclusion reached by the original Arbitrator does not amount to fraud.

Therefore I find that the tenant has not presented evidence to support her application for review consideration on this ground.

I further find, pursuant to Section 81(1)(b)(iii) of the Act, the tenant's application 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.

Decision

Due to the above, I dismiss the tenant's application for review consideration and confirm the original decision and order of November 18, 2013, granting the tenant a monetary order of \$550.

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 10, 2013

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Residential Tenancy Branch