



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

**Dispute Codes:** FF MND MNR MNSD

### **Introduction**

The Decision/Order under review is a decision on the Landlord for a monetary order and to apply the security and pet damage deposit towards partial satisfaction of the Landlord's monetary award. The Landlord was partially successful in his application and was provided with a monetary order in the amount of \$558.22, after setting off the deposits.

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 following 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 for review on the second ground set out above.

### **Issues**

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

### **Facts and Analysis**

In his Application for Review Consideration, the Tenant indicates that he did not produce certain evidence, witnesses and submissions at the Hearing because he was under the impression that the Landlord had given up his right to claim against the deposits due to his failure to complete condition inspection reports.

The Tenant also submitted that, by failing to complete the condition inspection reports, the Landlord had not provided sufficient evidence to prove that damages had been caused by the Tenant. The Tenant provided written submissions setting out what he would have said at the Hearing if he had not been certain that the Landlord's application would fail.

### **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 original arbitration hearing**;
- the evidence is **new**;
- the evidence is **relevant to the matter which is before the Dispute Resolution Officer**;
- the evidence is credible, and
- the evidence **would have had a material effect on the decision** of the Dispute Resolution Officer

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

I dismiss the Tenant's Application for Review because the evidence provided by the Tenant was available at the time of the original arbitration hearing and is not new evidence.

It is important to note that in his Decision of November 29, 2013, the Arbitrator explained that although the Landlord had extinguished his right to claim against the deposits for damages, the Arbitrator was setting off the deposits under the provisions of Section 72 of the Act.

It is also important to note that the Arbitrator found that the Landlord had provided sufficient evidence to prove, on the balance of probabilities, that the Tenants did not clean the rental unit to a reasonable standard or make necessary repairs at the end of the tenancy.

**The Application for Review process is not an opportunity to re-argue the case.**

### **Conclusion**

The Tenant's Application for Review Consideration is dismissed.

The original Decision and Order dated November 29, 2013, are 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: January 03, 2014

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Residential Tenancy Branch