



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: FF MND MNR MNSD OPR

### Introduction

The original dispute resolution hearing on the application of the landlord for an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent and loss of rent revenue was held on January 15, 2014, and a Decision was issued by another Arbitrator on January 15, 2014. In that Decision, the original Arbitrator awarded the landlord an order of possession for the rental unit effective 2 days after service of the order on the tenants, a monetary award of \$6350, for unpaid rent for July through October 2013, and loss of rent revenue for November and December 2013, all in the amount of \$1050 per month and recovery of the filing fee of \$50. Additionally the original Arbitrator set off the tenants' security deposit and granted the landlord a monetary order for \$5850.

This is a request by the tenants for a review of that original Decision.

The tenants applied for a review on the grounds that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control, that they have new and relevant evidence that was not available at the time of the original hearing and that they have evidence that the Decision of January 15, 2014, was obtained by fraud, pursuant to Section 79(2) under the *Residential Tenancy Act*

### Issues

Have the applicants for review consideration provided sufficient evidence to support the indicated grounds for review?

### Facts and Analysis

The application for review consideration contains information under all three grounds for review consideration.

*Evidence that the applicants were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control-*

In their application for review consideration, the tenants contended that they did not attend the hearing on the landlord's application for dispute resolution as they did not receive the notice of the hearing due to having no key to the locked mailbox.

In her Decision of January 15, 2014, the original Arbitrator found that the landlord provided sufficient evidence that the two tenants were served notice of the hearing through personal delivery not registered mail, which was verified in a written witness statement.

I find that the applicants failed to rebut the finding in the Decision that they were served with the hearing documents personally, and the allegation of not having a key to the mailbox is not relevant.

Therefore I find that the tenants have not presented evidence to support their application for review consideration on this ground.

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

In support of this ground, the tenants supplied a letter from the landlord, dated August 20, 2013, asking the tenants to vacate and an inspection report from the municipality citing electrical issues with the rental unit, dated October 9, 2013. The tenants mentioned another letter, but this letter was not included with their supporting evidence.

I find whether or not the tenants received a letter from the landlord asking them to vacate or another letter from the municipality is irrelevant to the issues considered by the original Arbitrator, that being whether the tenants paid their monthly rent or whether or not the tenants disputed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which the tenants did not deny receiving. The tenants have remained in the rental unit well beyond the dates of either letter, and were still residing in the rental unit at of the day of the hearing.

Therefore I find that the tenants have not presented evidence to support their application for review consideration on this ground.

*Evidence the Decision was obtained by fraud-*

In support of this ground, the tenants restated that they did not receive the Notice of Hearing, which has now been previously addressed in this Decision.

The tenants also submitted that there was a previous dispute resolution hearing in which the landlords were found not to have grounds to evict the tenants. The tenants supplied a copy of that Decision, dated December 18, 2013.

This Decision of December 18, 2013, dealt with the landlord's application seeking an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act, in other words, for cause such as extraordinary damage to the rental unit, not unpaid rent.

That Decision mentions that the landlords also had outstanding another application for dispute resolution for an order of possession for the rental unit based upon a 10 Day Notice, the one at issue here.

Therefore the issue raised by the tenants are not related to the issue of the 10 Day Notice in this application, and I find that the tenants have not presented evidence to support their application for review consideration on this ground.

I further find, pursuant to Section 81(1)(b)(iii) of the Act, the tenants' 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. I have made this determination as the tenants have presented no evidence that they have in fact paid any rent since July 2013 or that they did not owe rent.

#### Decision

Due to the above, I dismiss the tenants' application for review consideration and confirm the original decision and orders of January 15, 2014, granting the landlord an order of possession for the rental unit and a monetary order of \$5840.

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 23, 2014

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Residential Tenancy Branch