



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: FF MND MNDC MNR

### Introduction

The Tenant has applied for a Review Consideration of a decision and monetary order made on October 1, 2013, in which the Tenant was ordered to pay the Landlord compensation (the "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 Tenant applies on ground 3 above.

### Issues

Does the Tenant have evidence that the director's Decision was obtained by fraud?

### Facts and Analysis

The application contains information under section "C3. Fraud". The Tenant writes,

"I have never received the order from the landlady. The second reason is because she made an agreement with me on the phone that she is going to cancel the court date if I pay her the amount of \$151. The amount has been paid, but she did not cancel the court date."

[Reproduced as written.]

On page 3 of the Decision the Arbitrator wrote the following:

“The landlord testified at the move out condition inspection the tenants left the rental unit dirty and the carpets unclean. The landlord stated that the tenant (DC) agreed that the report fairly represented the condition of the rental unit at the end of the tenancy. The landlord stated that the tenant (DC) agreed to the amount of \$150.00 for suite cleaning and \$150.00, for carpet cleaning. Filed in evidence is a copy of the Condition inspection report.”

[Reproduced as written.]

I note that on page 5 of the Decision the Arbitrator wrote the following:

“In this case, the condition inspection report indicated the tenants did not clean the rental unit or the carpets. In the report the tenant (CA) agreed on behalf of the tenants to the amount of \$150.00 for suite cleaning and \$150.00 for carpet cleaning. While the landlord seek \$157.50 for the carpet cleaning, I find that the parties had previous agreed to the amount of \$150.00 for carpet cleaning. Therefore, the landlord is granted compensation for suite cleaning and carpet cleaning in the total amount of \$ **\$300.00.**”

[Reproduced as written.]

I note that the outgoing condition inspection report indicates the following: that the Tenants agreed the Landlord could retain \$150.00 for suite cleaning and \$150.00 for carpet cleaning, that the Tenants agreed the Landlord could deduct these amounts from the security deposit and that the balance owed to the Landlord was \$1,065.00.

### Decision

Policy Guideline 24 sets out when an Arbitrator may accept, refuse or dismiss an Application for Review Consideration:

“ ...

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 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.

A review may be granted if the person applying for the review provides evidence meeting **all three** of the following tests:

1. information presented at the original hearing was false;
2. the person submitting the information knew that it was false; and,
3. the false information was used to get the outcome desired by the person who submitted it.”

[Reproduced as written.]

Based on the above, the record of the proceeding, the Application of the Tenant, and on a balance of probabilities, **I find that the Application for Review Consideration must be dismissed.**

It appears from the Decision that the Landlord informed the Arbitrator through testimony and evidence that there had been some agreement regarding the Landlord keeping \$150.00 for suite cleaning and \$150.00 for carpet cleaning. I find there is insufficient evidence from the Tenant that proves the Landlord provided false information to the Arbitrator. In fact the Arbitrator writes in the Decision that the Landlord is held to the agreed upon amount of \$150.00 for carpet cleaning in the rental unit.

Furthermore, aside from the written submissions of the Tenant, there is no evidence that the Tenant ever paid the Landlord the amount of \$151.00, as alleged in his submissions. For example, there is no receipt showing this payment being made to the Landlord.

Lastly, there is insufficient evidence to substantiate that the Landlord ever agreed to cancel the hearing. In fact, with an outstanding balance of \$1,065.00 on the condition inspection report and the Landlord's Application amount of \$1,673.75, it does not seem probable that the Landlord would accept \$151.00 in final satisfaction of these claims.

Therefore, I find the Tenant has insufficient evidence to prove that false information was provided to the Arbitrator, or that the Decision was obtained by fraud. **For these reasons the Application for Review Consideration is dismissed.**

The Decision made on October 1, 2013, stands and remains in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 03, 2014

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Residential Tenancy Branch