



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD O

### Introduction

This Application for Review Consideration was filed by the landlord, SH, on January 28, 2014, seeking a Review Consideration of the Decision dated January 15, 2014, and having received that decision by mail on January 23, 2014. The Decision dismissed the landlord's application and granted the tenants a monetary order in the amount of \$475.00, comprised of the return of the tenants' security deposit and the recovery of the filing fee of \$50.00.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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.

Landlord SH has applied on the second ground.

### Issue

- Has the landlord provided evidence that the landlord has new and relevant evidence that was not available at the time of the original hearing?

### Facts and Analysis

The Application contains information under section C2, on why the landlord has new and relevant evidence with respect to the hearing held on January 2, 2014.

The landlord writes in her Application:

“- TEXT MESSAGE FROM TENANT DATED SEPT 12/13 INDICATING HIS INTENT TO MOVE.  
 - DOCUMENT WAS OVERLOOKED  
 -VERIFIES TENANTS INTENT TO MOVE ON OR BEFORE OCTOBER 1/13”  
 [Reproduced as written]

The landlord submitted the Decision dated January 15, 2014, and a one-page screen shot of a text message dated “Thu, Sept 12, 11:44 AM”, which is illegible at the bottom left portion of the page.

### Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

Section 80 of the *Act* states that an applicant **must** submit their application **within 15 days** of the date they receive the Decision or Order when the Decision or Order related to a monetary order under the *Act*. The landlord filed their Application for Review Consideration on January 28, 2014, having received the Decision on January 23, 2014. As a result, I find that the landlord submitted their Application within the timeline as set out in section 80 of the *Act*.

In order to be successful on the second ground for review, the landlord must prove that new and relevant evidence exists that was not available at the time of the original hearing.

The landlord writes that the text message dated September 12, 2013, was “overlooked” and given that the hearing was held on January 15, 2014, would not constitute new evidence. I find that a lack of preparation or due diligence on the part of the landlord prior to the hearing does not constitute “new and relevant” evidence after the hearing. Therefore, **I dismiss** the landlord’s Application due to insufficient evidence.

As the landlord’s Application has been dismissed, the Decision and Order made on January 15, 2014, **stand and remain 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 *Residential Tenancy Act*.

Dated: January 31, 2014

---

Residential Tenancy Branch