



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.*

### **Introduction**

This is an application by the tenant seeking a Review Consideration of the decision rendered by the arbitrator on January 27, 2014, after a hearing held on January 22, 2014. The original hearing was to deal with the tenant's application for monetary compensation and an order to force the landlord to make repairs. The tenant was partially successful in the application. The tenant is now seeking to be granted a Review of that original decision.

I find that the tenant failed to follow the instructions on the "*Application for Review Consideration*" in section "E" which provides:

### ***" E. SUPPORTING DOCUMENTS AND INFORMATION***

#### ***ATTACHMENTS:***

*You **must attach** all written evidence to support your application, including a copy of the decision(s) and/or order(s) being reviewed."*

The section on the form below the above instruction below states:

*"Please check off what is attached to this form:*

☐ *copy of decision or order you wish to have reviewed"*

I find that the tenant did not check the box above and neglected to supply a copy of the decision or order that the tenant sought to be reviewed, contrary to instructions on the Application for Review Consideration form.

According to section 79(2) of the *Residential Tenancy Act*, a party to the dispute may apply for a review of the decision. The application for Review Consideration 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.

In this application, the tenant has applied for review under grounds 2 and 3, above.

### **Issues**

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

### **Facts and Analysis**

#### **Evidence**

Under the heading "C2. NEW AND RELEVANT EVIDENCE" on the application for Review Consideration, the applicant is asked to: "**List each item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant.**"

The tenant indicated the following: (Reproduced as written)

- "1. I have a witness who was unavailable to attend the Hearing as she was away from Canada.....*
- 2. I have additional photos (I didn't have them earlier, they are a result of recent development regarding my Claim) I*
- 3. I have my unit layout (Landlord provided it during the Hearing)*
- 4. I have new calculations based on the new Unit Layout.*
- 5. I have two new Service Requests I sent to Landlord regarding same leaks, which are still NOT fixed.*

The tenant attached 25 additional pages and supporting sheets.

In regard to making an application for Review Consideration, based on the ground of new and relevant evidence, I find that the applicant must prove that he or she has evidence that was not available at the time of the original arbitration hearing and could not be obtained through due diligence prior to the proceedings.

I find that the tenant's request for the original hearing was filed with the Residential Tenancy Branch, on November 28, 2013, and the hearing was scheduled to proceed on January 22, 2014.

Rule 3.4 of the *Residential Tenancy Branch Rules of Procedure* require, to the extent possible, an applicant must file copies of all available documents, photographs or other evidence at the same time as the application is filed.

Rule 3.5(a) states that evidence that is not available to be filed with the application, but which the applicant intends to rely upon to support their claim, must be received by the Residential Tenancy Branch and be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

I note that the **Landlord and Tenant Fact Sheet** contained in the hearing package makes it clear that *"copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible."*

The **NOTICE OF A DISPUTE RESOLUTION HEARING** sheet giving the date and time of the hearing, along with the phone number and participant access code for the teleconference, also contains guidance under the heading **"GENERAL INFORMATION about your responsibility and the hearing"**. This section of the document states, in part:

***"Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are important"***

I find that it is the responsibility of the participant to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence for the arbitration hearing. Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through reasonable steps, have become aware of the evidence.

In this situation I find that the tenant has provided additional evidence that clearly was in existence at the time the tenant filed the application. I also find that any evidence with respect to incidents or occurrences that transpired after the tenant filed for dispute resolution on November 28, 2013, are not relevant to the dispute being heard.

I find that, during the period between the time the application was made in November 2013 and when the dispute was heard in January 2014, (or even prior to making the

application), it was the responsibility of the applicant tenant to locate and submit any evidentiary material that the tenant intended to rely on, prior to the hearing.

In any case, I find that the “new” data supplied by the tenant with the Review Consideration Request, does not qualify as new and, on a balance of probabilities, it could have been obtained through due diligence prior to the hearing.

Given the above, I find that the tenant has not submitted sufficient proof to establish that a review is warranted based on the ground of new evidence. For this reason, I dismiss the portion of the tenant’s application requesting Review consideration based on “new evidence”.

### **Fraud**

In regard to the tenant’s claim of fraud, the tenant stated: (Reproduced as written)

*“1. Landlord falsely claimed that photos I submitted as evidence are of the most recent leak. The truth is that the photos have been taken for a period of November of 2009 until the end of November 2013 – period of 4 years and 1 month.*

*2. Landlord falsely claimed that I ask rent reduction for having to live with leak issue. The truth is I ask for rent reduction for not being able to use entire apartment area, due to leaks.*

*3. Landlord falsely claimed that only 10% of living room area has been affected by leaks, not corner bedroom AT ALL. The truth is 20% of living room and 53% of corner bedroom have been affected. (See Landlord’s and my Unit...layout)*

*4. Landlord’s Evidence Breakdown, line 10, stated that “starting in 2013 the foundation leak in unit...returned”. The truth is the leak has never been fixed at first place, so it has been a continuation of the same leak.*

*5. Landlord’s Evidence Breakdown, line 13, stated that “concrete injections drastically reduced the leaks”. They did not”*

When claiming fraud, as a basis to review the decision, I find that it is not enough to merely argue that the opposing party made false, contradictory or misleading statements at the hearing.

During a dispute resolution hearing, it is a principle of natural justice that each party is completely at liberty to give his or her own version of the facts as they see them. Then the other party is granted an equal opportunity to refute the testimony or argue against

any evidence presented during the hearing by the other party, and the arbitrator will consider these arguments and evidence.

The fact that one party continues to dispute the evidence and testimony of the opposing party and disagrees with the outcome of a hearing, are not factors that will suffice to make this a case of fraud.

I find that the tenant has not submitted sufficient verification to prove that the tenant was deprived of the right to state any relevant concerns about the accuracy and veracity of the landlord's evidence during the hearing.

I find that this tenant had a fair opportunity to refute the landlord's testimony and evidence during the proceedings and to express the tenant's concerns about whether the landlord was presenting factual information.

With respect to the tenant's list of arguments detailed in the Application for Review Consideration, I find that these same arguments about alleged lies and misleading evidence put forth by the landlord, were, or should have been, made to the arbitrator who presided over the original hearing held on January 22, 2014.

The purpose of a Review is not to afford an applicant a second opportunity to present arguments against the testimony and evidence of the opposing party. I find that the hearing decision was rendered after hearing the tenant's side of the dispute and taking into account the tenant's stated position.

I therefore do not accept the tenant's claim that the arbitrator's decision was obtained by fraud and find that a review is not warranted on this ground.

Given the above, I find that the tenant's evidence submitted with the Request for Review Consideration does not support the claim that the arbitrator's decision was obtained by fraud on the part of the landlord. Accordingly, I hereby dismiss this ground as the basis to justify a Review of the original decision.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient grounds for a review. I find that the Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under the ground cited.

Accordingly, the tenant's application for Review Consideration is hereby dismissed without leave and the original decision issued on January 27, 2014 remains in force.

Decision

The tenant's request for Review Consideration is not successful and the application is dismissed.

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: February 06, 2014

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Residential Tenancy Branch