



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Introduction**

The Decision/Order under review is a decision on the Landlord's application for an early end to tenancy and an Order of Possession. The Landlord was granted an Order of Possession.

The Tenant submits that he received the Decision on March 7, 2014, by hand.

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 third ground set out above.

## **Issue**

Does the Tenant have evidence that the director's decision or order was obtained by fraud?

## **Facts and Analysis**

In his Application for Review, the Tenant submits that information submitted by the Landlord at the initial Hearing was false. The Tenant provided a copy of the February 24, 2014, Decision; a written statement of a witness; and two pages of the Tenant's written submissions in support of his Application.

It is difficult to read and understand the Tenant's submissions; however, I believe he is submitting that the Landlord lied when he testified that the hydro meter was missing on February 6, 2014, and that the Tenant didn't notify the Landlord until February 11, 2014. The Tenant does not explain how the date that the hydro meter was missing would have affected the outcome of the Hearing. The Tenant does not deny that he removed the meter and reconnected the electricity.

The party alleging fraud must allege and prove **new and material** facts, or newly discovered and material facts, which were **not known to the applicant at the time of the Hearing**, and which were not before the arbitrator, and from which the arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the Decision or Order was obtained by fraud. The burden of proving this issue is on the person applying for the Review.

A party who is applying for review on the basis that the arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the arbitrator, **and that that evidence was a significant factor in the making of the Decision.**

The burden of proving this issue is on the person applying for the review. If the arbitrator finds that the applicant has met this burden, then the review will be granted.

With respect to the matter the Tenant appears to assert is fraudulent, it was not a matter unknown to the Tenant at the time of the original Hearing. The Tenant may disagree with the arbitrator's findings of fact, but the Tenant had an opportunity to respond to the Landlord's evidence at the Hearing.

This ground for review is not designed to provide parties a forum in which to rebut findings by the arbitrator or to allege an error of fact or law.

I find that the Tenant's application does not disclose sufficient evidence that the Decision and Order were obtained by fraud, or that false evidence on a material matter was a significant factor in the making of the Decision, and therefore I dismiss his application.

### **Conclusion**

The Tenant's Application for Review Consideration is dismissed. The original Decision and Orders dated February 24, 2014, 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: March 19, 2014

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Residential Tenancy Branch