



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

### Introduction

On October 22, 2014 Arbitrator M. Bruce provided a decision on the tenants' Application for Dispute Resolution seeking emergency repairs and a rent reduction. The hearing had been conducted on October 22, 2014. That decision granted the tenants several orders for the landlords to make repairs and retroactive and future rent reductions. The landlords did not request an extension of time to apply for Review Consideration.

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 landlords submit in their Application for Review Consideration that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control and that they have new and relevant evidence that was not available at the time of the original hearing.

### Issues

It must first be determined if the landlords have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the landlords have submitted their Application within the required time frames it must be decided whether they are entitled to have the decision of October 22, 2014 suspended with a new hearing granted because they have provided sufficient evidence to establish that they were unable to attend the hearing for unexpected reasons that were beyond their control and they have new and relevant evidence that was not available at the time of the original hearing.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 5 days after a copy of the decision or order is

received by the party, if the decision relates to repairs or maintenance or services or facilities.

From the decision of October 22, 2014 the issues before the Arbitrator were related to the tenants' claim for compensation and for repairs to the rental unit. As such, I find the decision the landlords are requesting a review allowed 5 days to file their Application for Review Consideration.

From the landlords' submission they received the October 22, 2014 decision on October 30, 2014 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 30, 2014 (the same day they received the decision). I find the landlords have filed their Application for Review Consideration within the required timelines.

The landlords submit that they did not attend the hearing because the resident manager had confirmed with the tenant on two occasions that the tenants were planning to "rescind the Notice of a Dispute Resolution Hearing after agreeing to a 50% rent reduction due to and ongoing egress problem."

Despite the assertion that the parties had come to a resolution on the matters resolved in the decision dated October 22, 2014 the landlords have provided no evidence that they had any agreement worked out with the tenants that included cancelling the hearing. I find it is not sufficient to simply state that an agreement was reached.

I also find that nothing prevented the landlords from contacting the Residential Tenancy Branch prior to the hearing or to call in to the hearing at the scheduled time to confirm if the hearing had been cancelled. I note that the Notice of Dispute Resolution Hearing document provided to the landlords by the tenants indicate clearly that the landlord must attend the hearing at the time and date assigned; that the hearing will continue with or without their presence; and a final and binding decision will be issued once the hearing is concluded. As such, I find it was within the landlords' control to call into the hearing at the scheduled time.

The landlords submit they would have provided evidence and testimony regarding the work they had completed; that the required repairs had been completed and the tenants were now happy with the results. They also submit they would have provided pictures and invoices and given oral evidence the tenant had agreed to rescind the Notice after agreeing to a 50% rent reduction.

The landlords also submit that they have new and relevant evidence. They submit the new evidence is that the tenant purposely misled the resident manager by saying they were going to rescind the Notice after the tenant agreed to pay the 50% rent reduction. The landlords go on to describe how they believe the tenants failed to communicate their unhappiness with the "offer of 50% rent reduction".

While this may have been considered new evidence that relates to the reasons the landlords chose not to attend the hearing I find that this evidence is not relevant to the issues outlined in the tenants' Application for Dispute Resolution (repairs and rent reduction). As such, it has no bearing on the outcome of the original hearing.

I also note that despite earlier in the landlords' Application for Review Consideration the landlords refer to the agreement they had with the tenants regarding a 50% rent reduction but in the section under new and relevant evidence the landlord refers to an **offer** made to the tenants for a rent reduction. As such, I find the landlords have not established they had reached an agreement prior to the hearing. Rather I find that they had made an offer to the tenants however the landlord has provided no evidence to confirm the tenants agreed to any offers.

### Decision

Based on the above, I find the landlords have failed provide sufficient evidence to prove that they were unable to attend the hearing for reasons that were unexpected and outside of their control or that they have new and relevant evidence as grounds for a new hearing. I dismiss the landlords' Application for Review Consideration.

The decision made on October 22, 2014 stands.

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: November 04, 2014

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Residential Tenancy Branch