



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Introduction

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:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. A party has new and relevant evidence that was not available at the time of the original hearing.
- c. A party has evidence that the director's decision or order was obtained by fraud.

The Tenants now apply for review on the grounds of 79(2)(a) and 79(2)(c).

## Issues

- 1) Does this Review Application meet the requirements for Review Consideration for a decision obtained through the Direct Request Process?
- 2) Have the Tenants proven the director's decision or order was obtained by fraud?

## Facts and Analysis

The Decision and Order under review is a decision granted through the Direct Request process issued November 13, 2014, which granted the Landlord an Order of Possession and a Monetary Order for unpaid rent of \$1,900.00.

The Tenants submitted documentary evidence to support their request for review consideration which consisted of: a copy of the original order of possession; a statement listing 13 arguments; 4 photos of inside the rental unit; and the Tenants' application for review consideration.

As written on the front page of the November 13, 2014, decision, a decision granted through the Direct Request Process is an ex parte proceeding granted pursuant to section 55(4) of the *Residential Tenancy Act*. The decision in this matter was made **without** a participatory hearing and was based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.

Based on the above, no hearing was required to be held, therefore, a review application cannot be considered on the grounds that a party was unable to attend the hearing. Accordingly, I find this ground for review consideration must fail.

The reasons the Tenants rely on for proving the Decision and Orders were obtained by fraud were: (1) arguments that the Landlord had committed an act of fraud by providing them false information about cats being inside the rental unit prior to their tenancy; and (2) the Landlord has told them that he would work things out with them; and (3) the Tenants had emergency repairs completed because their child suffers from severe cat allergies, by having the carpets cleaned and hired a company to disinfect and clean the furnace ducting in the house.

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 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. If the Arbitrator finds that the applicant has met this burden, then the review will be granted.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator. A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying.

Section 33 of the Act defines what emergency repairs are and stipulates the following:

- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
  - (a) emergency repairs are needed;
  - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
  - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Upon review of the Tenants' submissions, I find there to be insufficient evidence to prove the Tenants were required to complete emergency repairs, that the Tenants paid to complete emergency repairs, or that those repair costs equaled the amount owed for rent. I make this finding in part because there was no medical documentation provided to prove the Tenants' child suffered from live threatening allergies; there were no receipts provided to prove the Tenants paid to have repairs completed; and there is no evidence the Tenants followed the requirements of section 33(3) of the Act, as listed above.

Based on the aforementioned, I find the Tenants have provided insufficient evidence to prove newly discovered and material facts, which were not before the Arbitrator, and from which the Arbitrator conducting the review can reasonably conclude that the decision or orders were obtained by fraud.

### Decision

Overall I find that pursuant to Section 81(b) the application does not disclose sufficient evidence of a ground for the review and discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

**The Decision and Orders made on November 13, 2014, stand.**

This decision is legally binding 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: December 04, 2014

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Residential Tenancy Branch