



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: ERP FF LAT LRE MNDC O

### Introduction

On March 18, 2011 Dispute Resolution Officer (DRO) XXXXXXXXX provided a decision on the tenants' two Applications for Dispute Resolution to cancel a Notice to End Tenancy; seeking a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; seeking orders to have the landlord make repairs; to suspend or set conditions on the landlord's right to enter the rental unit; and to authorize the tenant to change the locks to the rental unit .

That decision dismissed the tenants' application for all compensation and to cancel the Notice to End Tenancy. The decision also notes that the landlord requested an order of possession during the hearing and as the DRO dismissed the tenants' application to cancel the notice she granted the landlord an order of possession in accordance with Section 55 of the *Residential Tenancy Act (Act)*.

Division 2, Section 79(2) under the *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.

Section 80 states that a party wishing to make an application for review of a decision or order that relates to an order of possession under section 55 must do so within 2 days after a copy of the decision or order.

### Issues

The issues to be decided are whether the tenants are entitled to more time to submit their application for review; to a new hearing; or to have the original hearing reconvened, pursuant to Sections 82 of the *Act*.

## Facts and Analysis

The tenants submit that they have not received a copy of either the decision or order granted on March 18, 2011. While it is unclear from the tenants' submission if they acted upon oral decisions provided by the DRO or service from the landlord upon the tenants of the order of possession granted to the landlord, I will grant the tenants' application for additional time to submit the Application for Review.

The tenants' Application for Review submission indicates the tenants are applying for the review based on fraud by the landlord and incompetence of the DRO. As noted above, competency of the adjudicating officer is not one of the specified grounds for granting a new or reconvening an original hearing.

Residential Tenancy Policy Guideline #24 stipulates a "party alleging fraud must allege and prove new 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 tenants assert in their submission that much of the landlord's testimony was false but the tenants have failed to provide any corroborating evidence to support this allegation. In addition the bulk of the tenants' submission deals specifically with arguments supporting the tenants' original claim and attempts to "reargue" the original Application for Dispute Resolution.

## Decision

I find the tenants have failed to provide any evidence of fraud on the part of the landlord and I dismiss the tenants' Application for Review.

The decision made on March 18, 2011 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: April 13, 2011.

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Residential Tenancy Branch