



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: FF MND MNDC MNR MNSD

### Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) provides a party with the opportunity to apply for review consideration of a decision and orders. 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.

On June 06, 2013 a decision was issued by an arbitrator as the result of a cross-application hearing where the tenant applied requesting compensation and return of the security deposit; the landlord applied requesting compensation for damage to the unit, unpaid rent, compensation for damage or loss and to retain the security deposit. The landlord was found to be entitled to \$50.00 for unpaid rent; the balance of the \$1,671.60 claim was dismissed.

The tenant was found to be entitled to return of double the security deposit, in the sum of \$950.00. The landlord received the decision on June 21, 2013 and applied for review consideration on July 03, 2013.

### Preliminary Matters

I note that the application for review consideration is completed in hand-writing; some of which was difficult to discern, rendering portions illegible. A detailed letter dated June 27, 2013 set out the basis upon which the landlord had applied for review consideration.

The landlord also supplied a copy of a letter issued on May 30, 2013 which was considered as evidence during the June 05, 2013 hearing. Therefore, that evidence has been previously taken into account and was not reconsidered for the purpose of the review consideration application.

### Applicant's Submission

The application for review consideration states the decision should be reviewed on the 3<sup>rd</sup> ground for review:

1. A party has evidence that the director's decision or order was obtained by fraud.

The landlord submits that the arbitrator accepted false information from the tenant and made false judgements.

The landlord submitted a lengthy letter dated June 27, 2013 in which he re-argues the submissions that were made during the hearing held on June 05, 2013. The landlord accuses the tenant of stealing a washing machine and states that the arbitrator heard only one side of the story. The landlord states that the arbitrator did not ask him to respond to the tenant's submissions and that the tenant fooled the arbitrator into believing the tenant had not stolen the appliances and an industrial heavy duty toilet seat.

The landlord also submits that if the hearing had been held in person he could have given the arbitrator a copy of the move-out condition inspection report.

The landlord states that the tenant illegally entered the unit after her tenancy had ended, with the purpose of taking pictures which were then used in the hearing. The landlord alleges that the tenant submitted a fraudulent letter and that he was denied the right to question a witness who provided testimony.

The landlord submits that the tenant forced an individual to write a letter used as evidence and that this evidence was biased. The landlord states that he did not ask the tenant's witness questions at the time of the hearing as the witness was under pressure from the tenant; he states the police need to investigate this matter.

The landlord states that the security deposit was returned to the tenant; payment was made by cheque and that cheque was cashed. The landlord indicates there is a cheque number, but then did not supply that number. The landlord then placed a stop payment on the cheque as the tenant had stolen the appliances.

The landlord submits that the hearing should have been adjourned to an in-person hearing so that the tenant could be judged and the arbitrator could assess who was lying and who was truthful. The landlord believes that the arbitrator failed to consider all of the evidence before her and that the evidence was based on fraud.

The landlord supplied a copy of receipt for a washer and dryer that he believes is fraudulent, photographs of a toilet seat, an alleged fraudulent written submission, and a copy of the security deposit cheque issued to the tenant on February 9, 2013, which the landlord also states had payment stopped.

### Analysis

This ground applies where a party has evidence that the arbitrator's decision was obtained by fraud. Fraud is the intentional "false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive".

The burden of proving fraud 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. The applicant must show that false information was submitted, that the person submitting the evidence knew it was false and that the false information was used to obtain the desired outcome.

The landlord has made a number of allegations in relation to his perceived unfairness of the hearing; the landlord alleges he was not provided an opportunity to ask questions and that the tenant lied and influenced a witness.

I find that the landlord has re-argued the case and that there is no evidence before me in support of the allegation that fraud played any role in the decision issued on June 06, 2013. The landlord was present at the hearing held on June 05, 2013 and was at liberty to supply evidence at that time; if he believes that the process of the hearing was somehow unfair or biased then the landlord is at liberty to submit an application, within the required time-frame, requesting judicial review of the decision.

In the absence of anything but allegations of fraud or any evidence that supports an allegation of fraud, I find that the request for a review hearing is dismissed and that the decision and Order issued on June 06, 2013 is confirmed.

### Conclusion

The application for review consideration is dismissed.

The decision and Order issued on June 05, 2013 is 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: July 17, 2013

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Residential Tenancy Branch