



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW CONSIDERATION DECISION**

Dispute Codes    MNSD, FF

### Introduction

This is an application filed by the landlord for the review of a decision issued on June 21, 2013. The landlord claimed not to have received the decision until September 6, 2013, the date on which he filed for review.

The hearing to address this issue was originally set for March 20, 2013, at which time the landlord appeared at the hearing but the tenant did not. The matter was at that time dismissed without leave to reapply. On April 15, the tenant applied for review and a new hearing was ordered. The new hearing took place on May 22 and the decision issued on that date shows that although the tenant had been directed to serve the landlord with a copy of her application, evidence and review decision, she had failed to do so. The Arbitrator adjourned the hearing and instructed the tenant to serve the landlord. The hearing was reconvened on June 19, at which time the tenant provided evidence that she had served the documents on the landlord by sending them via registered mail to the address for service he had provided on both the tenancy agreement and a notice to end tenancy. The Arbitrator found that the tenant had served the documents as required by the legislation and the hearing proceeded in the landlord's absence, resulting in a monetary award of \$1,100.00 being awarded against the landlord.

### Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states 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 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.

### Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground of fraud. The landlord provided a copy of a cancelled cheque showing that on December 11, 2012, \$322.24 was returned to the tenant's husband.

The landlord also claimed that while the tenant had alleged that the deposit was increased by \$175.00 during the tenancy, this increase was not paid. The landlord provided a copy of a tenancy agreement which is signed only by the tenant and not by the landlord and claimed that the agreement entered into evidence by the tenant had been altered by her.

The landlord maintained that the tenant's name was not on the tenancy agreement and therefore she could not be considered a tenant.

### Analysis

The landlord did not allege that he did not receive notice of the hearing and the claim made against him, but relied solely on the allegation of fraud.

Residential Tenancy Policy Guideline #24 provides in part as follows:

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 ...

The applicant was aware of the claim made against him, he had copies of the tenant's evidence and he also had access to the cancelled cheque showing that part of the security deposit had been returned to the tenant's husband. None of the evidence submitted by the landlord can be characterized as newly discovered facts which were not known to the landlord at the time of the hearing. The landlord had the option of appearing at the hearing to dispute the claim against him, as he did on the date of the original hearing, but instead he chose not to attend the hearing.

The Arbitrator relied on the tenant's undisputed evidence. The tenant provided a copy of a tenancy agreement which was signed by both her husband and the landlord, whereas the document submitted by the landlord does not have his signature and therefore cannot be considered a binding agreement. The notations on the tenant's agreement may have been added by the tenant, but the Arbitrator could just as easily have relied on the tenant's oral testimony, which was also undisputed.

I note that in order to prove fraud, the landlord must prove that the act was intentional rather than a negligent act or omission. It is entirely possible that the tenant was unaware of the partial payment made to her former husband and the landlord's evidence consisting of an unsigned tenancy agreement is not sufficiently persuasive to convince me that the additional security deposit was not paid.

I find that the landlord has not provided evidence that is new or was not known to the landlord at the time of the hearing and has not proven on the balance of probabilities that the tenant obtained the decision by fraud..

### Conclusion

I dismiss the Application for Review Consideration. The original decision made on June 21, 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: September 13, 2013

---

Residential Tenancy Branch

