



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute codes:** MNR OPR

### **Introduction**

The Tenant has applied for a review of the Decision and Orders of a Dispute Resolution Officer dated November 19, 2013. The Decision and Orders granted an *order of possession and a monetary order to the Landlord*.

### **Issues**

Does the Tenant's Application contain sufficient reasons to support grounds for a review?

### **Facts and Analysis**

Division 2, Section 79(2) of 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 following 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 Tenant relies on the second grounds for review as indicated above.

The Decision and Orders were granted through the direct request process. There is no participatory hearing held in this process, rather it is a proceeding done by written application only, and the Dispute Resolution Officer was satisfied that the Tenant was served with Notice of the direct request proceedings in accordance with the provisions of the Act.

As this is a proceeding done by written application of the Landlord, there is no provision for the Tenant to provide documentary evidence. **The only ground for review of a Decision granted through the direct request process is fraud.**

It is important to note that the Tenant submits in her Application for Review that she made three attempts to pay rent within the five days allowed by the Act, but that the Landlord refused to accept payment. She alleges that she responded to the Notice to End Tenancy by letter dated November 7, 2013. A copy of the letter was provided with her Application for Review Consideration. The letter discloses that she “will not pay for a service that you the landlord did not provide. I have deducted \$375.00 form (sic) this months rent”. Section 26 of the Act provides that rent must be paid when it is due whether or not a landlord complies with the Act, regulation or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent (for example, an Order of the Director). The Tenant provided no evidence that she had an Order allowing her to deduct a portion of the rent for services agreed upon but not provided.

I find that the evidence provided by the Tenant was available is neither new nor relevant to the matter that was before the Dispute Resolution Officer at the Direct Request Proceeding. The Proceeding dealt with the Landlords’ application pursuant to the provisions of Sections 55 and 67 of the Act for Orders arising from **unpaid rent** and therefore I find that the evidence provided by the Tenant in her Application for Review would not have had a material effect on the decision of the Dispute Resolution Officer. The Tenant remains at liberty to file an Application for compensation for damage or loss against the Landlords should she so desire.

Overall, I find that the Application for Review Consideration does not disclose sufficient evidence of a ground for review, nor does the Application disclose any basis upon which, even if the submissions in the Application were accepted, the Decision or Orders of the Dispute Resolution Officer should be set aside or varied. The original Decision and Orders dated November 19, 2013, are therefore confirmed.

### **Decision**

The Tenant’s Application for Review is dismissed.

The Decision and Orders made on November 19, 2013, stand.

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 26, 2013