



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC RR

### Introduction

This is an application by the tenant for a review of the decision of an Arbitrator dated November 5, 2013. The tenants original application was for monetary compensation for loss of quiet enjoyment under the Act, regulations or tenancy agreement, to recover garage rental costs in the amount of \$654.08 and for a rent reduction of \$3,500.00 for three and half months that they were not able to use the basement of the rental unit. The Arbitrator decision dismissed the loss of quiet enjoyment due to lack of evidence and dismissed the garage rental arrangement as it was not connected to the tenancy or the tenancy agreement. The Arbitrator did find for the tenants for the loss of the basement area in the amount of \$3,500.000 and the Arbitrator awarded the tenants the filing fee of \$50.00. The Tenants were awarded a monetary order for \$3,550.00 on November 5, 2013.

The tenants have now applied to have a review of the part of the application for compensation for loss of quiet enjoyment as the tenants believe the landlord's testimony was fraudulent and as a result the Arbitrator dismissed this part of the application.

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:

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.

### Issues

The tenant's application for a review of the previous Arbitrator's decisions is on the grounds that the tenant has evidence that the decision and orders were obtained by fraud. Is the tenant's application justified?

### Facts and Analysis

The tenant applied for a review based on their belief that part of their application was dismissed as a result of the landlord's testimony being fraudulent. The tenants' review application contains the review application, a copy of the decision, a letter from North Okanagan Youth and Families Services dated July 19, 2013 an excerpt from a letter from the RCMP disclosure clerk with no date on it and written statement from the tenants. The tenants' say in their written statement that they believe the Landlord lied under oath at the hearing as they believe the landlord harassed them. In the hearing the tenants provided witness letters and police file numbers to support their argument. The Arbitrator's decision makes note of these efforts to support the tenant's claims, but indicates the witness letters are not notarized and the police reports are only numbers and no charges have resulted; therefore the Arbitrator indicated the tenants did not meet the burden of proof on this part of the application.

After examining the tenants review application I find the tenants have not provided any new or additional evidence that corroborates or proves the Landlord was fraudulent. It appears the tenants are just re-arguing the case with the same information. I find the tenant have not provided any new or additional evidence that proves the landlord lied or was fraudulent at the hearing of November 5, 2013. Consequently, I find the tenants

have not met the burden of proof to show the Landlord was fraudulent at the hearing and I dismiss the tenant's review application for lack of evidence.

### Decision

Consequently, I find the tenants have not established grounds to be awarded a review hearing. The decision of the Arbitrator stands in full effect and the tenants' application for a review hearing is dismissed without leave to reapply.

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

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Residential Tenancy Branch