



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute codes:** MNDC

### **Introduction**

This is an application by the tenant seeking a Review Consideration of the decision rendered by the arbitrator on March 13, 2013. The original hearing was to deal with the tenant's application disputing an additional rent increase, but the arbitrator found that the tenancy was not under the jurisdiction of the Residential Tenancy Act and was beyond the authority of the arbitrator to determine.

According to section 79(2) of the *Residential Tenancy Act*, a party to the dispute may apply for a review of the decision. The application for Review Consideration 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.

In this application, the tenant has applied for review under grounds (2) and (3).

### **Issues**

Has the applicant for review provided sufficient evidence to support one of the indicated grounds for review?

### **Facts and Analysis**

#### **Evidence**

Under the heading "C2. NEW AND RELEVANT EVIDENCE" on the application for Review Consideration, the applicant is asked to: "**List each item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant.**"

The tenant listed two pieces of new evidence, and the tenant indicated the following:

- "1) landlord's confession of theft of electricity was not available @ time because of Recent move & loss in packing
- 2) arbitrator's decision arrived documenting perjury by the landlord."

(Reproduced as written)

The tenant attached a copy of email correspondence allegedly from the landlord to the tenant sent in 2011.

In regard to making an application for Review Consideration, based on the ground of new and relevant evidence, I find that the applicant must prove that he or she has evidence that was not available at the time of the original arbitration hearing and could not be obtained through due diligence prior to the proceedings.

I find that the tenant's request for the original hearing was filed with the Residential Tenancy Branch, on September 26, 2013, and the hearing was scheduled to proceed on December 4, 2013, over 2 months later.

Rule 3.4 of the *Residential Tenancy Branch Rules of Procedure* require, to the extent possible, an applicant must file copies of all available documents, photographs or other evidence at the same time as the application is filed.

Rule 3.5(a) states that evidence that is not available to be filed with the application, but which the applicant intends to rely upon to support their claim, must be received by the Residential Tenancy Branch and be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined the "Definitions" part of the Rules of Procedure.

I note that the **Landlord and Tenant Fact Sheet** contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*" The **NOTICE OF A DISPUTE RESOLUTION HEARING** sheet giving the date and time of the hearing, along with the phone number and participant access code for the teleconference, also contains guidance under the heading "**GENERAL INFORMATION about your responsibility and the hearing**". This section of the document states, in part:

***"Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are important"***

I find that it is the responsibility of the participant to prepare for an arbitration hearing as fully as possible. Parties should collect and supply all relevant evidence for the arbitration hearing. Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through reasonable steps, have become aware of the evidence.

In this situation I find that the tenant has provided additional evidence that clearly was in existence at the time, being that it is correspondence between these two parties authored in 2011. Moreover, I find that the tenant had over two months from filing his application, before the

scheduled hearing date, to obtain and serve any relevant evidence upon which he intended to rely.

I find that, during this period or even before he applied for the dispute resolution hearing, it was incumbent upon the applicant tenant to locate and submit this evidentiary material, prior to the hearing. In any case, I find that the “new” data supplied by the tenant with the Review Consideration Request, is not new and that, on a balance of probabilities, it could have been obtained through due diligence prior to the hearing.

I find that the tenant has not submitted sufficient proof to establish that a review is warranted based on the ground of new evidence.

### **Fraud**

In regard to the tenant’s claim of fraud, the tenant stated:

- “1) the landlord lies under oath
- 2) confession via email is True”

(Reproduced as written)

The tenant stated that the landlord’s testimony during the hearing conflicts with the landlord’s written statements contained in email sent to the tenant in 2011.

When claiming fraud, as a basis to review the decision, I find that it is not enough to merely argue that the opposing party made false, contradictory or misleading statements at the hearing.

During a dispute resolution hearing, it is a principle of natural justice that each party is completely at liberty to give his or her own version of the facts as they see them. Then the other party is granted an equal opportunity to refute the testimony or argue against any evidence presented.

The fact that one party continues to dispute the evidence and testimony of the opposing party and disagrees with the outcome of a hearing, are not factors that will suffice to make this a case of fraud.

Moreover, I find that the tenant did have a fair opportunity to refute the landlord’s testimony and had a chance to make these same arguments about alleged lies put forth by the landlord, to the arbitrator who presided over the original hearing held on December 4, 2013.

I find that the tenant’s testimony about the landlord’s veracity with respect to this issue was already heard or should have been expressed by the tenant and all testimonial and documentary evidence was duly considered by the arbitrator before the arbitrator made a decision. I find that the decision was rendered after hearing the tenant’s side of the dispute and taking into account the tenant’s stated position.

I therefore do not accept the tenant's claim that the arbitrator's decision was obtained by fraud and find that a review is not warranted on this ground.

Given the above, I find that the tenant's evidence submitted with the Request for Review Consideration does not support the claim that there is new and relevant evidence, nor that the arbitrator's decision was obtained by fraud on the part of the landlord.

Pursuant to *Section 81(b) (ii)* of the *Residential Tenancy Act*, I must dismiss this application for review on the basis that it does not disclose sufficient grounds for a review. I find that the Applicant has not succeeded in demonstrating that the evidence contained in this Application would meet the criteria for granting a review under the ground cited.

Accordingly, the landlord's application for Review Consideration is hereby dismissed without leave and the original decision issued on December 4, 2013 remains in force.

#### Decision

The landlord's request for Review Consideration is not successful and the application is dismissed.

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: December 12, 2013

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Residential Tenancy Branch