



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Review Consideration Decision

Dispute codes: MNR OPR

### Introduction

On January 31, 2014 an arbitrator provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The Application was adjudicated through the Direct Request process and a participatory hearing was not held.

The tenants failed to provide a copy of the decision with their Application for Review Consideration. The tenants did not request an extension of time to apply for Review Consideration.

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.

The tenants submit in their Application for Review Consideration that they have evidence that the director's decision was obtained by fraud.

### Issues

It must first be determined if the tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether the tenant is entitled to have the decision of January 31, 2014 suspended with a new hearing granted because they have provided sufficient evidence to establish that the landlord obtained the decision based on fraud.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is received by the party, if the decision relates to a landlord's notice to end tenancy for non-payment of rent.

From the Application for Dispute Resolution submitted by the landlord the issues before the Arbitrator were related to the landlord's issuance of a 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the decision the tenants are requesting a review on allowed 2 days to file their Application for Review Consideration.

From the tenants' submission they received the January 31, 2014 decision on February 5, 2014 and filed their Application for Review Consideration with the Residential Tenancy Branch on February 7, 2014 (2 days after receipt of the decision). I find the tenants have filed their Application for Review Consideration within the required timelines.

While the tenants applied for Review Consideration under the ground that the landlord obtained the decision by fraud the tenants did respond to the questions regarding the ground of being unable to attend. In those responses the tenants indicate that they were not given any notice of a hearing and that "I have medical problems". The tenants also submit that had they attended the hearing they would have provided a receipt for \$353.00 for repairing the fireplace.

As the Direct Request process is completed *ex parte* and no hearing was conducted a notice of hearing would not have been provided to the tenants. The tenants did not indicate in their Application for Review whether or not they received a notification of the Direct Request proceeding. In addition, the tenants submit that "I" have medical problems but they did not indicate which one of the two tenants has medical problems or how that would have prevented them from dealing with the Notice to End Tenancy or why the other tenant could not have dealt with these issues.

In the section of the Application for Review Consideration regarding fraud the tenants have responded to the questions by stating:

- "I gave the landlord a receipt for the 2 and 3 fireplace";
- "She told me to fix it and she said pay and take it off rent"; and
- "Because the monetary amount was wrong and she said she would negate the proceedings"

Despite the requirements listed on the last page of the Application for Review Consideration stating that the applicant **must attach** all written to support their application including a copy of the decision; the tenants have failed to provide either a copy of the decision or the receipt for fireplace repairs that they submit would have changed the decision.

As such, I find the tenants have failed to provide any evidence that the decision was obtain by fraud.

Decision

Based on the above, I dismiss the tenants' Application for Review Consideration

The decision made on January 31, 2014 stands.

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: February 19, 2014

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Residential Tenancy Branch