



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

### Introduction

On October 22, 2014 an arbitrator provided a decision on the tenants' Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause and to have the landlord comply with the Residential Tenancy Act (Act), regulation or tenancy agreement. The hearing had been conducted on October 8, 2014.

That decision granted the notice to be cancelled and ordered that a clause in the park rules was not enforceable. The landlord 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 landlord submits in her Application for Review Consideration that she has evidence that the director's decision was obtained by fraud.

### Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the landlord has submitted her Application within the required time frames it must be decided whether she is entitled to have the decision of October 22, 2014 suspended with a new hearing granted because she has provided sufficient evidence to establish that the tenants 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 5 days after a copy of the decision or order is

received by the party, if the decision relates to a notice to end tenancy for any reason other than an early end to the tenancy or non-payment of rent.

From the decision of October 22, 2014 the issues before the arbitrator were related to a 1 Month Notice to End Tenancy for Cause, among other things. As such, I find the decision the landlord is requesting a review allowed 5 days to file her Application for Review Consideration.

From the landlord's submission she received the October 22, 2014 decision on November 22, 2014 and filed her Application for Review Consideration with the Residential Tenancy Branch on November 24, 2014 (2 days after receipt of the decision and order). I find the landlord has filed her Application for Review Consideration within the required timelines.

The landlord submits that the tenants had testified in the hearing that they forgot to send more postdated cheques as they expected to sell their home and it slipped their mind. The landlord then submits in her Application for Review Consideration arguments as to why the arbitrator should not have believed the tenant's testimony.

The landlord states that the tenants had not been paying their rent by cheque since before April 1, 2014 and that it was a condition of their tenancy agreement. The landlord argues that the tenant's had until July 19, 2014 to pay the rent and that they were given extra time "as the Hearing Officer believe that they forgot to send more postdated checks in July and believed they had sent more checks right away.

The decision dated October 22, 2014 states the arbitrator accept the tenants had a compelling reason for grant an extension to apply to cancel the Notice to End Tenancy for a number of reasons. First the arbitrator wrote that the tenants were no longer living in the home in the park; Secondly once they received the notice they paid the outstanding rent as well as the rent for the following month; Thirdly that they had not provided post-dated cheques to the landlord because they had originally thought that they would not have possession of the home after May 24, 2014; and finally that the payment that would have been required because they had not provided the landlord with post-dated cheques had slipped their mind.

It is not clear to me, from the landlord's submission in her Application for Review Consideration what evidence or testimony submitted by the tenants to the original hearing was fraudulent. The landlord has provided no evidence as to how she knew what was in the tenant's mind or how she can confirm that the act of making the payment of rent did not slip the tenants' minds.

I find the landlord has provide no evidence to establish fraud but rather it appears the landlord is attempting to re-argue her case and provide arguments because she disagrees with the arbitrator's findings. A Review Consideration is not an opportunity to re-argue a party's position or the arbitrator's findings.

In addition, the landlord submits that a third party was in attendance at the hearing. She goes on to state that this third party was not a party to the dispute or a witness and she believes that she should have the right to privacy at hearings. The arbitrator wrote in the original decision: "Two other persons joined the call and identified themselves as Housing Advocates. They did not represent the tenants or testify, but were there to support the tenants. The landlord did not object."

I find this is not pertinent to the landlord's Application for Review Consideration and even it were, the landlord did not raise an objection to these participants presence during the hearing and cannot now raise it as an issue, as such this not evidence of fraud.

### Decision

Based on the above, I dismiss the landlord's Application for Review Consideration.

The decision made on October 22, 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 *Manufactured Home Park Tenancy Act*.

Dated: November 27, 2014

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Residential Tenancy Branch