



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC

### Introduction

This is an application by the landlord for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on January 28, 2011, with respect to applications for dispute resolution from both the landlords and the tenants. The landlords applied for a review of their application for dispute resolution (File No. \*\*). They made no application to review the tenants' application (File No. ##).

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied.

### Issues

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 landlords applied for a review of the decision on the basis of the first of the grounds outlined above because they did not receive notice of the reconvened hearing of January 27, 2011.

### Facts – Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

A dispute resolution hearing is a formal, legal process and parties should take steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In their Application for Review, the landlords indicated that they did not receive any notice of the reconvened hearing of their application or the tenant's application scheduled for January 27, 2011.

### Analysis – Unable to Attend

DRO XXXX's decision explained why she adjourned the original hearing of January 7, 2011. At that hearing, the landlords attended but the tenants did not. The landlords testified that they were unaware that the tenant had commenced his own application for dispute resolution regarding this tenancy. The DRO did not have copies of photographs entered as evidence by the landlords, so DRO XXXX adjourned the hearing in order to have this evidence before her when she made her decision.

On January 11, 2011, the Residential Tenancy Branch (RTB) mailed both the landlords and the tenant notice of the reconvened hearing. The RTB mailed a copy of this notice to the mailing address identified in the landlord's November 4, 2010 application for dispute resolution. This notice was subsequently returned to the RTB by Canada Post on March 8, 2011 as "Moved/Unknown."

The landlords did not attend the reconvened hearing on January 27, 2011, although the tenant did. In her decision, the DRO explained why she rejected the tenant's claim that he had served notice of his application for dispute resolution to the landlords by sending it by registered mail to the landlord at the rental unit. She noted that the tenant admitted that he knew that the landlords did not reside there and that he had been provided a different mailing address from the landlords with their application for dispute resolution. Since the DRO found that the tenant had not served his notice to the landlord in accordance with the *Act*, she dismissed the tenant's application for dispute resolution with leave to reapply.

DRO XXXX issued the following findings regarding the landlords' application for dispute resolution.

*...By failing to attend the reconvened hearing, I find that the Landlord failed to diligently pursue the Landlord's Application for Dispute Resolution and I therefore dismiss the Landlord's Application for Dispute Resolution, without leave to reapply. The Landlord retains the right to file a Request to Review this decision if the Landlord was unable to attend the reconvened hearing for reasons that could not be anticipated and were beyond the Landlord's control...*

The landlords did not revise their mailing address which appears to have changed between November 4, 2010, when they applied for dispute resolution, and March 23, 2011, the date they filed their Application for Review. The RTB has no record of receiving any change of address from them until the landlords sent their Application for Review. They knew that the original hearing was adjourned and that another hearing would be reconvened. However, the landlords did not redirect their mail to their current mailing address through Canada Post and did not call the RTB to advise of their change of address.

Under these circumstances, I find that the landlords did not take proper care and diligence in ensuring that the RTB had their current mailing address to continue their application for dispute resolution. I find that the landlords' application for review fails to show how their non-attendance at the hearing was beyond their control and could not have been anticipated.

In making this finding, I note that the landlords did not apply for review of the tenant's application for dispute resolution which was dismissed by DRO XXXX for the reasons outlined above.

I dismiss the landlords' application for review on the basis that the application discloses insufficient evidence of this ground for review. The original decision is therefore confirmed.

#### Decision

The decision made on January 28, 2011 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*.