



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF

Introduction

The Applicant/Landlord applies for review of a decision by a Dispute Resolution Officer (DRO), of a hearing set down and conducted on September 28, 2011.

Division 2, Section 79(2) under the *Residential Tenancy Act* provides that 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 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.

The Applicant indicated that there are two grounds for review: **the Applicant was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the Applicant's control; and, the Applicant has evidence that the decision was obtained by fraud.**

Issues

Has the Applicant provided sufficient evidence in support of their inability to attend the hearing and that the circumstances could not be anticipated and were beyond their control?

Has the Applicant provided sufficient evidence that the decision was obtained by fraud?

Facts and Analysis

The Applicant states that they were unable to attend the original hearing because they were out of the country from September 3 to October 13, 2011 and that during this

period, their daughter was left as the property manager. The Applicant provided a copy of their ticket and itinerary as proof of their absence from the country at the time of the Hearing. The Applicant further states that had they appeared they would have disputed the Tenant's application to cancel a one month notice to end tenancy for cause (the "Notice") by having a realtor attend as a witness and by provision of evidence of a phone complaint to the police made in August.

In order to be successful in their application, an applicant for Review must establish that:

- The applicants were unable to attend the hearing;
- the circumstances for being unable to attend the hearing could not be anticipated; and
- the circumstances were beyond the party's control.

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they can participate or have an agent participate in such a hearing. The Decision notes that the Applicants served the Tenant with a one Month Notice to End Tenancy for Cause on August 26, 2011. The effective date of this Notice was September 2, 2011. This Notice initiated a process that would have been anticipated at the time of service of the Notice. Indeed, the Applicants have shown their anticipation of the need for an agent to attend to their obligations by placing their daughter in the role of their property manager during their absence. There is no indication that this person was unable to attend the hearing as the applicant's agent. Accordingly, I find that the Applicants have not substantiated their inability to attend or to be represented by an agent. Given this finding, I decline to consider the evidence that the Applicants would have provided had they or their agent/property manager attended the Hearing.

The Applicant further submits that the decision was obtained by fraud and provides the following statements as evidence of such fraud:

- Tenant was aware that the house was to be listed for sale;
- Tenant never asked to have pets;
- Tenant did not inform the Applicant that others were to live there;

- Tenant has been burning garbage illegally (and) neighbours have complained; and
- Tenant had agreed to yard renovations for house sale including the burn barrel.

None of these statements indicate any fraud; rather, these statements appear to be arguments to support the validity of the Notice that was cancelled by the Decision. The Applicants could have attended the hearing or be represented at the hearing to hear and have the opportunity to respond to all evidence of the other party and to make the above submissions. As there is no other basis to support a finding that the decision was obtained by fraud, I dismiss the application for review.

Decision

The decision made on October 19, 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*.

Dated: October 19, 2011.

Residential Tenancy Branch