



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNSD

Introduction

On October 05, 2011, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for the return of double the security deposit. In the absence of the landlord, the tenant was awarded a monetary claim. The landlord has applied for a review of this decision.

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 applicant relies on sections 79(2)(a) of the *Residential Tenancy Act* (the "Act").

Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control.

Issues

Was the applicant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control?

Facts and Analysis

Unable to Attend

In his application for review on the grounds that he was unable to attend, the landlord states that he was the only witness to a motor vehicle accident and therefore, he remained on site to assist the driver, ensure the driver's safety and also help the driver locate the owner of the other vehicle involved in the accident. The applicant was unable to attend the hearing by conference call as it was scheduled to take place while he was at the site of the accident.

I find that the failure of the applicant to attend the original hearing was due to circumstances which could not be anticipated and were beyond his control and as such I grant the request for a review. I order that the original hearing be reconvened. The review hearing will be conducted by conference call. The parties will be notified of the date of the review hearing by the Residential Tenancy Office. The landlord must provide to the tenant copies of the relevant information and/or documents to which he may refer at the hearing. Service must be by registered mail or personal service.

Failure to attend the hearing at the scheduled time, with all relevant evidence and/or witnesses, will result in a decision being made on the basis of any information before the Dispute Resolution Officer and the testimony of the party in attendance at the hearing.

The decision made on October 05, 2011 is suspended pending the outcome of the reconvened hearing.

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 26, 2011.

Residential Tenancy Branch