



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNL FF

### Introduction

On October 31, 2011 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on September 30, 2011.

That decision granted that the notice be set aside and the tenancy to continue as a result, at least in part, of the landlord's absence and therefore undisputed testimony provided by the tenant.

In the original Application for Dispute the tenant named XXXXXX as the sole respondent; at the hearing of October 31, 2011 the tenant requested that XXXXXX be named as a co-respondent and based on the two Notices to End Tenancy submitted by the tenant to the original hearing XXXXX is listed as the landlord's agent.

For the purposes of this Application for Review Consideration, I have name all three as the Applicants for the Review.

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 submit in their Application for Review that that they were unavailable at the time due to circumstances beyond their control.

### Issues

The issues to be decided are whether the landlords are entitled to have the decision of October 31, 2011 suspended and a new hearing granted because they have provided sufficient evidence that they were unable to attend the hearing due to circumstances beyond their control.

### Facts and Analysis

The landlords submit that the tenant served the notice of hearing documentation to an address in a different city than that of the address for service of the landlord. DRO XXXXX writes in his decision that: "The applicant tenant gave evidence that she had served the landlords with the Notice of Hearing sent by registered mail on October 4, 2011 but that she lost the postal tracking number and receipt."

I also note that in the tenant's original Application for Dispute Resolution she has listed the only named landlord (XXXXXX) with a service address of XXXXX, BC. In both of the Notices to End Tenancy submitted by the tenant they provide XXXX as the named landlord with a service address of XXXXXXXX. These notices are the only documentary evidence of any part of the tenant's Application.

As the tenant was not able to provide confirmation of her service through registered mail at the hearing and based on the inconsistent addresses the tenant provided to the original hearing and the submission from the landlords I find the landlords were unable to attend the hearing because they were not served with notice of the hearing by the tenant and therefore for reasons beyond their control.

### Decision

For the reasons noted above, I find the landlords have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included in the attached documents. The landlord must serve the tenant within 3 days of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on October 31, 2011 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: November 14, 2011.

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Residential Tenancy Branch