



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: AT CNL LRE OLR

### Introduction

On November 21, 2011 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; and to allow access to (or from) the unit for the tenant or the tenant's guests. The hearing had been conducted on November 21, 2011.

That decision dismissed the tenant's Application for Dispute Resolution with liberty to reapply as neither the applicant tenant or the respondent landlord attended the hearing.

Division 2, Section 79(2) under the *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 tenant submits in her Application for Review Consideration that she was unable to attend the hearing at the time due to circumstances beyond her control and that she has new and relevant evidence that was not available at the time of the hearing.

### Issues

The issues to be decided are whether the tenant is entitled to have the decision of November 21, 2011 set aside and a new hearing granted because she has provided sufficient evidence to establish that she was unable to attend the hearing due to circumstances beyond her control and/or that she has new and relevant evidence not available at the time of the original hearing.

### Facts and Analysis

In her Application for Review Consideration in response to the question "What happened that was beyond your control or that could not have been anticipated that prevented you from attending the original hearing" the tenant responded that "winter

storms, snow, bad weather. Power failures the day of meeting. I am disabled and there is also a lot of icy areas did not have power for phones etc for the day.”

The tenant has provided no documentary or corroborating evidence confirming that she was without power and she could not call in to the conference call at the time of the hearing. As such, I find the tenant has failed to establish that she was not able to attend the hearing due to circumstances that could not be anticipated and were beyond her control.

When asked, in the Application for Review Consideration, to list each item of new and relevant evidence and state why it was not available at the time of the hearing and how it is relevant the tenant responded “My doctor and O.T. Just sent the letters.”

When one party files an Application for Dispute Resolution all evidence should be submitted with the party’s Application. While I recognize that this is not always possible The Residential Tenancy Branch Rules of Procedure stipulate that all evidence to be relied upon by the Applicant must be submitted 5 days prior to the hearing.

If the tenant’s physician and occupational therapist had evidence relevant to the tenant’s Application this should have been provided in accordance with the Rules of Procedure. Further the tenant has provided no explanation as to why the information was relevant to her Application.

Based on the above, I find the tenant has failed to establish she has new and relevant information that was not available at the time of the hearing.

While not relevant to the decision of this Review Consideration, I note that DRO XXXXX dismiss the tenant’s Application with leave to reapply and as such the tenant remains at liberty to file a new Application for Dispute Resolution on the same matters identified in her original decision.

### Decision

For the reasons noted above, I dismiss the tenant’s Application for Review Consideration.

The decision made on November 21, 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: November 25, 2011.

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Residential Tenancy Branch