



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

On December 16, 2011, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and for a monetary order for unpaid rent, but did not attend the hearing. The tenant attended the hearing. The application was dismissed. 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

The applicant states in his application that he had undergone surgery on December 14, 2011 and was taking pain killers for a few days that caused him to pass out. The applicant attached a doctor's note that states that the applicant received an oral surgical

procedure on December 14, 2011 and had informed the doctor that he had significant discomfort and was on pain killers for a few days.

In reply to what evidence, the applicant would have presented had he attended the hearing, the applicant is silent.

In order to meet this test, the applicant 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.

An arbitration hearing is a formal, legal process and parties should take reasonable 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. The Residential Tenancy Branch provides detailed instructions to the parties to enable them to attend the conference.

The applicant applied for dispute resolution on December 05, 2011 and shortly after was provided the notice of hearing package with information regarding the date and time of the scheduled hearing. The hearing took place on December 16, 2011.

The landlord could have requested an adjournment if he was scheduled for surgery. The landlord could also have had an agent represent him at the hearing.

The landlord chose neither option. I find that the applicant has not established that the circumstances which led to the inability to attend the hearing were beyond his control and could not be anticipated.

This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended, requested an adjournment or had an agent represent him at the hearing.

Accordingly, I find that the application for review on this ground must fail.

Decision

The decision made on December 16, 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: December 23, 2011.

Residential Tenancy Branch