



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC MT OLC RP

Introduction

On February 23, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to cancel a notice to end tenancy. The tenant did not attend the hearing. The landlord was granted an order of possession. The tenant 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) and (b) 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. Section 79(2)(b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

Issues

Was the applicant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control? Does the applicant have new and relevant evidence that could change the decision?

Facts and Analysis

Unable to Attend

The applicant states in his application that he has an infection that requires him to be at the hospital daily for treatment that takes approximately five hours to get done. The applicant has not attached any evidence to indicate the nature of his condition or to support the circumstances that caused him to miss the hearing.

In reply to what evidence, the applicant would have presented had he attended the hearing, the applicant has attached a handwritten undated note from a witness who describes the events of a night. The date of the night in question is not indicated in the note.

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 February 07, 2012 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 February 23, 2012.

The applicant could have called in to request an adjournment if he was scheduled for treatment in the hospital at the time of the hearing. The applicant could also have had an agent represent him at the hearing.

The applicant 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.

New and Relevant Evidence

I note that in his application for review on these grounds, the applicant has described events that took place on “*the night that it was said*”. The applicant has not provided details of the date and time of the incident that he is describing and does not indicate how these events would have changed the decision. The applicant also describes events that took place on February 29, 2012, which occurred after the date of the hearing on February 23, 2012.

I find that the tenant has not submitted any new evidence and therefore has failed to establish grounds for review in this tribunal and accordingly, I find that the application for review on this ground must fail.

Decision

For the above reasons I dismiss the application for leave for review.

The decision made on February 23, 2012 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: March 09, 2012.

Residential Tenancy Branch