



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ERP FF MNDC MNR OLC PSF RP

Introduction

On March 15, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary order and for an order directing the landlord to carry out repairs. The landlord did not attend the hearing. The Dispute Resolution Officer granted a portion of the tenant's application. 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) 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 the applicant's control? Does the applicant have new and relevant evidence that could change the decision?

Facts and Analysis

Unable to Attend

In order to meet this test, the application 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.

In his application for review, the landlord states that he had left the country on February 06, 2012 and returned on March 16, 2012. The landlord filed a copy of his flight arrangements.

The tenant applied for dispute resolution on February 29, 2012 and mailed the notice of hearing on that same day. The hearing took place on March 15, 2012 prior to the return of the landlord. Based on the landlord's submissions with this application for review, I find that the landlord has proven that he had circumstances that were unanticipated and out of his control that prevented him from attending the hearing.

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new and relevant to the matter which is before the Dispute Resolution Officer,
- the evidence would have had a material effect on the decision of the Dispute Resolution Officer

On this ground for review, that the applicant has new and relevant evidence the applicant states that he has statements from his employees who attended the rental unit and worked on fixing the problem on the same day that the problem was reported to the landlord. The landlord has attached letters from both employees to his application for review.

On the basis of the information presently before me, I am satisfied that the landlord was unable to attend the hearing due to circumstances beyond his control. Also based on the statements of the landlord's employees who attended to the problem, I find that the

landlord responded on the same day that the problem was reported to him and that the tenant was assisted in the moving of his furniture. The Dispute Resolution Officer made a decision based on the evidence in front of her at the time of the hearing and I find that evidence regarding the date and actions taken by the landlord following the tenant's complaint was not provided to the Dispute Resolution Officer.

I hereby order that that the original decision and order dated March 15, 2012 be suspended until a review has been completed. The parties will be notified of the date of the review hearing by the Residential Tenancy Office. The landlord must also provide to the tenant copies of the relevant information and/or documents to which he may refer at the hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents 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.

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: April 10, 2012.

Residential Tenancy Branch