



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF OLC

Introduction

This is an application by the tenant for a review of a decision rendered by a Dispute Resolution Officer (DRO) on April 16, 2012, with respect to an application for dispute resolution from the tenant.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied.

Issues

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 tenant applied for a review of the decision because she maintained that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control, the first of the grounds outlined above.

Facts and Analysis

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.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing.

In the Application for Review Form, the applicant was asked to list the reasons that prevented the applicant from attending the original hearing. The applicant responded as follows:

My sons father/boyfriend (AAB) had his tractor trailer stolen....After he had spoken with the police...he was given another truck to use but not realizing at the time his port pass (ID for truck drivers) he needs to get in and out at the ports was in the truck that was stolen. He called me asking if i could go to Langley...to the port pass agency to get a photo copy for him. I did not intend for it to interfere in my appointment at all, I also did not realize the line up as well at the port pass agency. I did try my best to get back on time, iwas 10 min late i called in at 1:20pm I do apologize that it did take up all parties involved time. I was the application for this complaint against KHS,. Unfairness is happening and I really do hope I get another chance for a hearing. Thank you TB.

(as in original)

In the Application for Review Form, the applicant did not respond to the request to identify the testimony or additional evidence she would have provided had she attended the original hearing. Her only attachment was a copy of a port pass photo statement, a phone number for the owner of the trucking company employing her male friend and a police file number.

Although I have carefully reviewed the tenant's application, I find little substance to her application other than she was doing a favour for her male friend and did not leave herself enough time to return for her telephone conference call. Rather than being 10 minutes late calling in, she called 20 minutes after the scheduled time to hear her application for dispute resolution. When the tenant agreed to undertake the errand for her friend, she was aware of the scheduled conference call. As this was not a face-to-face hearing but a telephone conference call, she could have called and connected with the teleconference from any location if she had taken the conference calling numbers with her when she left for the errand requested by her male friend. I find no basis to find that the tenant's reason for failing to participate in this conference call was beyond her control.

In addition, the tenant has failed to provide any evidence that she would have provided had she been able to attend the hearing to pursue her application for dispute resolution.

I dismiss the applicant's application as it does not disclose sufficient evidence of a ground for review. Further the application does not disclose any basis on which, even if the submission in the application were accepted, the decision of the DRO should be set aside or varied.

The original decision rendered in this matter is therefore confirmed.

Decision

The decision made on April 16, 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: April 25, 2012

Residential Tenancy Branch