



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF

### Introduction

The Applicant/Tenant applies for review of the decision on the basis that the Tenant was unable to attend the Hearing, has new and relevant evidence and on the basis of fraud.

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.

### Issues

Has the Tenant provided evidence to substantiate a review on any of the three grounds set out above?

### Facts and Analysis

The Tenant submits that the conference call Hearing was attended by the Tenant for over an hour but that no one else came on the call. The Tenant submits that the new and relevant evidence is that the incident that took place was a home invasion by a stranger and not a guest of the Tenant. The Tenant submits that fraud occurred as the Landlord was noted to be in attendance at the Hearing when the Tenant was the only Party on the call. Finally, the Tenant submits that the Landlord accepted the Tenant's rent and is willing to wait until September 1, 2012.

It is noted that the conference call Hearing pursuant to the Tenant's application for dispute resolution was scheduled to be heard at 1:30 p.m. on April 4, 2012. The teleconference report from this Hearing indicates that the Hearing commenced at this time with the Dispute Resolution Officer and the Landlord in attendance. The Hearing was concluded at 1:37 p.m. and the Tenant called into the conference hearing at 1:44 p.m. The report further indicates that the Tenant remained on the conference line until 3:20 p.m.

Relevant parts of Section 81 of the Act provide as follows:

- (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

- (b) the application

- (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
    - (ii) does not disclose sufficient evidence of a ground for the review,
    - (iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied, or
    - (iv) is frivolous or an abuse of process;

Although it can be found that the Tenant attended the conference call Hearing, the Tenant appeared late and after the matter had been concluded. Parties attending Hearings scheduled by the Residential Tenancy Branch are expected to attend at the scheduled time to present their evidence and argument. While an administrative time limit on a party's appearance may appear unfair such limits are necessary to maintain consistency and reliability and efficiency in the decision making process. Further, by virtue of the Tenant's late appearance at the Hearing, I cannot find that the Tenant failed to appear at the Hearing. Accordingly, I find that the Tenant has not proven on a balance of probabilities that the Tenant was unable to attend due to circumstances that could not be anticipated and were beyond the party's control.

Although the Tenant submits that an incident took place that was not the fault of the Tenant or the Tenant's guest, this evidence was available at the time of the Hearing and therefore I find that the Tenant has failed to substantiate this information as new evidence that was not available at the time of the Hearing. Finally, the allegation of fraud cannot stand in the face of the teleconference report that shows the Landlord to have attended the hearing.

The Tenant's submission in relation to the payment of rent and the Landlord's willingness to wait is a matter that is between the Parties and not evidence relevant to the review application and I therefore decline to consider this evidence.

As the Tenant has failed to substantiate any of the grounds for a review, there is no basis upon which to set aside the decision and the decision made on April 4, 2012 therefore stands.

#### Decision

The decision made on April 4, 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 19, 2012.

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Residential Tenancy Branch