



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

### Introduction

On July 05, 2012, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to cancel a notice to end tenancy but did not attend the hearing. The Dispute Resolution Officer granted the landlord 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) 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

Did the tenant have circumstances that prevented him from attending the hearing which could not be anticipated and were beyond his control? Had the tenant attended would he have presented evidence that would change the final decision?

### Facts and Analysis

The tenant states in his application for review that he had problems accessing the conference phone line because his "*phone was broken due to a drop by accident*" The

tenant states that he has lived at the rental unit for over six years and needs to have his side of the facts heard.

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. The tenant could have used a pay phone or borrowed a phone, to call in to the hearing by conference call to explain his situation and/or request an adjournment. The tenant could also have had an agent represent him at the hearing. The tenant 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.

In answer to the question regarding what evidence the tenant would have presented had he attended the hearing, the tenant is silent. The Dispute Resolution Officer made a decision based on the fact that the tenant did not attend the hearing to support his application to cancel the notice to end tenancy.

I find that the tenant has not proven that he had circumstances that were unanticipated and beyond his control, which prevented him from attending 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. Accordingly, I find that the application for review on this ground must fail.

### **Decision**

**The decision made on July 05, 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: July 13, 2012.

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Residential Tenancy Branch