



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** FF MNDC OPB OPC

### **Introduction**

On August 20, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for an order of possession and for compensation for damage or loss. The tenant did not attend the hearing. The Dispute Resolution Officer granted the landlord's application. 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 tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control? Does the tenant have new and relevant evidence that could change the decision?

### **Facts and Analysis**

**Unable to Attend**

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.

In his application for review on the grounds that he was unable to attend, the tenant states that he did not receive the notice of hearing. He also adds that there is a no contact order between himself and the landlord and he had no idea that a hearing had taken place until he was served with the orders.

In the decision dated August 20, 2012, the Dispute Resolution Officer indicates that he was satisfied that the notice of hearing was served in accordance with the *Residential Tenancy Act*, by registered mail.

Based on the evidence in front of me, I find that the notice of hearing was served on the tenant on August 03, 2012 and therefore, I find that the tenant was properly served with the documents. Accordingly, I find that the application for review on this ground must fail.

In answer to the question of what evidence the applicant would have presented had he attended the hearing, the applicant states that he would have testified that the landlord was renting the unit to two or four other individuals besides himself and collecting anywhere from \$1,000.00 to \$2500.00 in rent per month. The tenant also states that the fines levied by the strata would be the responsibility of all the occupants of the rental unit and not just his alone.

The Dispute Resolution Officer made his decision based on the documentary evidence filed by the landlord and the fact that the tenant did not file for dispute resolution within the allowed ten days and is therefore conclusively presumed to have accepted the notice to end the tenancy.

As determined by the Dispute Resolution Officer, the tenant was served with the landlord's evidence upon which the Dispute Resolution Officer determined the amount of the monetary order that he awarded to the landlord. The tenant was also served with the landlord's application and therefore was also aware of the nature and quantum of the landlord's claim. Therefore, even if I accept the tenant's evidence, that multiple tenants occupied the rental unit, it will not change the decision of the Dispute Resolution

Officer, which was based on the finding that the tenant did not dispute the notice to end tenancy within the allowed time.

Section 81(1) (b) (iii) of the Act allows the director to dismiss an application for review if the application 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. Accordingly, I find that the application for review on this ground must fail.

### **New and Relevant Evidence**

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

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

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant states that he always paid rent on time and has not been the direct subject of any of the fines levied by the strata.

The tenant states that he believes that the landlord made this application because of the current police investigation into the landlord's activities, where in the tenant is listed as a key witness. The tenant has attached newspaper clippings that speak about the landlord doing business without a licence. Upon reviewing the evidence filed by the tenant, I find that this evidence is not relevant to the dispute and the tenant does not explain how it would change the decision.

Again, The Dispute Resolution Officer made his decision based on the fact that the tenant did not file for dispute resolution within the allowed ten days and is therefore conclusively presumed to have accepted the notice to end the tenancy.

Therefore, even if the tenant's evidence is accepted it will not change the decision of the Dispute Resolution Officer.

This ground for review is not designed to provide parties a forum in which to rebut findings by the Dispute Resolution Officer or to allege an error of fact or law, but to provide evidence which could not have been presented at the time of the hearing because it was not in existence at that time. The applicants are free to apply for judicial review in the Supreme Court, which is the proper forum for bringing allegations of error.

The applicant has failed to establish grounds for review in this tribunal and accordingly, I find that the application for review must fail. For the above reasons I dismiss the application for leave for review.

### **Decision**

**The decision made on August 20, 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: August 29, 2012.

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Residential Tenancy Branch