



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD O

Introduction

On September 20, 2012, a hearing was conducted to resolve a dispute between these two parties. The landlord had applied for a monetary order. Both parties attended the hearing and the landlord was granted a monetary order. On October 10, 2012, the tenant applied for and was successful in her application for a review hearing. This hearing was scheduled for November 14, 2012. The landlord attended the hearing but the tenant failed to call into the hearing by conference call. As the tenant did not attend the hearing, the Arbitrator confirmed the original decision and order.

The tenant has now applied for a review of this decision dated November 14, 2012, that confirms the original decision and order.

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

Was the applicant unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control?

Facts and Analysis

Unable to Attend

In her application for review on the grounds that she was unable to attend, the applicant states that she did not receive the notice of hearing and was therefore unaware of the date and time of the hearing that took place on November 14, 2012.

The tenant was successful in her application for a review hearing dated October 10, 2012. In a decision dated October 16, 2012, the Arbitrator states *"For the reasons noted above, I find that tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's copy of this decision. The tenant must serve the landlord within 3 days of receiving this decision with a copy of this decision and the Notice of hearing documents"*.

With her application for review, the tenant has filed copies of emails. In one of the emails to a collection agency agent, she states *"I wasn't noticed that there were a review date set up"*

The Residential Tenancy Branch provides detailed instructions to the parties to enable them to attend the conference. The landlord received the same instructions and was successful in attending the hearing. Since the landlord was successful, I am not convinced that there is any reason why the tenant should not have been successful too.

In answer to the question regarding what evidence the tenant would have presented had she attended the hearing, the tenant is silent.

This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

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

The Arbitrator made the decision based on the fact that she found that the tenant was bound by the fixed term of the tenancy and by breaching the term the tenant caused the landlord to lose income. The applicant has not provided any additional information or evidence that she would have presented had she attended, that would change the decision of the Arbitrator. Accordingly, I find that the application for review on this ground must fail.

Decision

For the above reasons I dismiss the application for leave for review.

The decision made on November 14, 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: December 14, 2012.

Residential Tenancy Branch