



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes:  
FF MNDC MNSD O

### Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on February 7, 2013 (the original decision), with respect to applications from both the landlord and the tenant. The Arbitrator's decision dismissed the tenant's application without leave to reapply and noted that the landlord withdrew his application for review, once the tenant's application was dismissed.

An Arbitrator 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 on the basis of the first of the grounds noted above. The tenant applied on the basis that he was unable to connect with the original hearing on February 7, 2013, because of some type of problem encountered when he tried to connect with the telephone conference call hearing.

### 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 tenant was asked to explain what happened that was beyond his control that prevented him from participating in the original hearing. He attached a letter stating that he attempted to call into the telephone conference call at 11:00 a.m., the scheduled time for this hearing. He maintained that he “called about 12 times before I was finally patched through at 11 am.” When he realized that he must have missed the conference call hearing, he contacted the Residential Tenancy Branch (the RTB). After the RTB reviewed the calling records, it was learned that he was “patched through at 11:15 am.” Although he attempted to obtain records from his mobile phone carrier to demonstrate that he had commenced calling into the hearing at 11:00 a.m., he was unable to obtain these records. He noted that his mobile phone carrier would be willing to assist if we were to contact them directly after explaining the implications of the information required. He concluded by stating that he was unable to attend the hearing because of a problem with the Telus conference calling service.

The second portion of the Application for Review Form required the tenant to outline the testimony or additional evidence he would have provided had he been able to attend the hearing. Although he did not complete this portion of the application form, it appears that he tried to respond to this request by placing the following information in another part of his application:

*Only evidence I haven't submitted was photos showing damages and extremely poor living conditions. I was told I could submit them to the dispute resolution officer during the hearing...*  
(as in original)

This was the sole response that he provided to outline what he would have provided had he been able to connect with the conference call at 11:00 a.m. on February 7, 2013, the scheduled time for this hearing.

In considering the tenant's application for review, I need to consider both whether his explanation for why he did not attend was justified **and** whether he has demonstrated

that he had testimony or additional evidence that would have had any effect on the original decision.

I find his claim that he was unable to connect with the hearing on time somewhat confusing. While he stated that he called into the conference call at 11 a.m. and could not connect with the conference until 11:15 a.m., he also stated that he “finally patched through at 11 am.” This conflicting information calls into question the accuracy of his time frames for placing his calls, especially given that he could not provide any other corroboration for when he started placing his calls to be admitted to the conference call. He could not provide evidence from his mobile phone carrier that he called when he said he did. An Arbitrator appointed under the *Act* has the responsibility of considering the validity of the application for review. This responsibility does not extend to contacting mobile cell providers to obtain additional evidence that the applicant was unable to obtain to support the review application.

Despite having some reservations about the tenant’s application, I might still accept the tenant’s somewhat unclear claim that he was unable to participate in this hearing due to some type of technical difficulty if I were also convinced that he had evidence that would have made a difference to the outcome of the original decision.

I find that the tenant has submitted no such evidence. Rather, the tenant stated that it was his intention to submit photos to the dispute resolution officer (now the Arbitrator) at the hearing. He explained that he was “told” that he would be allowed to do this at the hearing. He did not indicate who “told” him that he could take this action during a conference call hearing where he would clearly not be able to present photographs for the Arbitrator’s consideration. The Notice of Hearing documents and the attachment clearly note that any evidence a party wishes to have considered must be provided to both the other party and the RTB in advance of the hearing and that “Deadlines are critical.” He did not submit these photographs either before the hearing or even now in support of his application for review. In fact, the tenant submitted almost no written evidence in support of his dispute resolution application initiated almost two full years after the end of his tenancy. The only substantive information he provided with his application was a 20 word explanation of his application in the “Details of the Dispute” section of his November 8, 2012 application for dispute resolution.

I find that even had the tenant participated in the conference call hearing at the appointed time on February 7, 2013, the only evidence he claims to have to assist with his application for a monetary award would not have been considered due to his failure to provide anyone with this evidence before the hearing. He could not have provided

photographs during the course of a hearing that he realized was to be considered by way of a telephone conference call.

Under these circumstances, I dismiss the tenant's application because I find that 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. I also dismiss his application because it does not give full particulars of the evidence on which the applicant intends to rely should a review be allowed. The original decision is therefore confirmed.

Decision

The decision made on February 7, 2013 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: March 14, 2013

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Residential Tenancy Branch