



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD

Introduction

On February 04, 2013, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary order. The landlord did not attend the hearing. The Arbitrator granted a portion of the tenant's application. The landlord 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)(b) and (c) of the *Residential Tenancy Act* (the "Act").

Issues

Was the applicant unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control? Does the landlord have new and relevant evidence that could change the decision? Does the landlord have evidence that the arbitrator's decision was obtained by fraud?

Unable to Attend

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.

In his application for review, the applicant stated that he did not receive the notice of hearing as he had moved out of Province for the period of November 2012 to February 2013, for business reasons. The applicant manages a business in the neighbouring Province which is an hour's drive away from home. During winter, he prefers to reside close to the place of business.

The applicant states that during this time away, he picks up his mail every two weeks. On one occasion he noticed that he had received a registered letter notification. When he went to pick it up, he was unable to because it had been returned to the sender.

The applicant states that the tenancy ended in October 2012 and he had returned the entire security deposit to the tenant. Therefore he had not anticipated that the tenant would apply for dispute resolution and he assumed the registered mail was in response to a credit card application.

The landlord received the decision on February 26, 2013 and made this application in a timely manner. I am satisfied that the applicant was unable to attend the hearing because he did not receive the notice to attend. Therefore, I grant the landlord's application for leave for review. I hereby order that the decision dated February 18, 2013, be suspended until a review hearing has been completed.

The review hearing will be conducted by conference call. The parties will be notified of the date of the review hearing by the Residential Tenancy Office. The landlord must provide to the tenant, copies of the relevant information and/or documents to which he may refer at the hearing. Service must be by registered mail or personal service.

Failure to attend the hearing at the scheduled time, with all relevant evidence and/or witnesses, will result in a decision being made on the basis of any information before the Arbitrator and the testimony of the party in attendance at the hearing.

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

Residential Tenancy Branch