



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

### Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on April 8, 2013, 2013 (the original decision) with respect to an application for dispute resolution from the tenant to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice).

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 review on the basis of the first and third of the grounds outlined above.

### Facts and Analysis – 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.

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 and could not have been anticipated that prevented him from attending the original hearing on April 8, 2013. The tenant responded as follows:

*I was unable to find the paper with the phone and access number and was also unable to obtain the correct information.*

In an attached letter, the tenant added that he had childcare unavailability on the day of the hearing and did not have a phone with which he could connect with the hearing.

I find that the tenant's application does not identify any circumstances that were either beyond his control or could not have been anticipated. I find that the tenant was responsible for not making adequate plans to ensure that he was available to participate in this teleconference hearing to consider his own application for dispute resolution. In addition to losing or misplacing the Notice of Hearing document provided to him by the Residential Tenancy Branch, the tenant also noted that he did not have child care for the time of the hearing and had not even made plans to obtain access to a telephone. Based on this information, it would seem that even had the tenant been able to find the lost document containing the telephone number and access code to connect with this teleconference hearing, he had no telephone with which to participate in the hearing. The tenant's almost total lack of preparation for a hearing that he applied to obtain cannot be used as a reason to obtain a review hearing on the basis of being unable to attend the original hearing. I dismiss the tenant's application for review as the tenant has not identified sufficient evidence of a ground for review on the basis of being unable to attend the original hearing.

#### Facts and Analysis - Fraud

This ground applies where a party has evidence that the Arbitrator's decision was obtained by fraud. Fraud must be intended. A negligent act or omission is not fraudulent.

A party who is applying for review on the basis that the Arbitrator's decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Arbitrator, and that the evidence was a significant factor in making the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Arbitrator, and from

which the Arbitrator conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review.

A review hearing will likely not be granted where an Arbitrator prefers the evidence of the other side over the evidence of the party applying. It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the Arbitrator.

In this case, the Arbitrator noted in his original decision that section 55 of the *Act* establishes that if the tenant's application to cancel the 1 Month Notice were dismissed and the landlord made an oral request for an Order of Possession, the Arbitrator must grant an Order of Possession to the landlord. Once the tenant did not attend the hearing and his application for dispute resolution to cancel the 1 Month Notice was dismissed, the Arbitrator was required to grant the landlord's oral request for an Order of Possession. This was the only issue before the Arbitrator.

Viewed in the above context, the Arbitrator had no need to rely on any of the evidence that the tenant maintained was fraudulent in issuing the Order of Possession. Even if that were not the case, the tenant has simply claimed that everything that the landlord said about the reasons for ending this tenancy was wrong. The tenant's application referred to information from the police that he said would substantiate the tenant's version of events as opposed to the version provided by the landlord. However, the tenant produced no such evidence from the police. Rather, the tenant attempted to maintain that the landlord was relying on old evidence as opposed to anything recent that had happened to end this tenancy for cause. In doing so, the tenant made little reference to a recent series of incidents, including one on March 14, 2013, involving the tenant's refusal to refrain from playing his electric guitar in this rental unit, an activity that others in this rental building apparently found annoying.

I also find that much of the tenant's application for review on the basis of fraud is an assertion that the landlord lied to the Arbitrator. As noted above, an application for review for fraud will not be granted if the applicant claims that the other party made false statements at the hearing and that his (the tenant's) testimony, would have been accepted had he appeared at the hearing.

Neither the information now submitted, nor the tenant's description of the issues demonstrates fraud as outlined above. The tenant's allegations that the Arbitrator

based his decision and order on fraudulent evidence submitted by the landlord is more in the nature of an attempt to present different evidence than what was before the Arbitrator at the original hearing. As outlined above, the Arbitrator dismissed the tenant's application to cancel the 1 Month Notice because he did not participate in the scheduled teleconference hearing. As was noted earlier in this decision, I find that the tenant had no valid reason for failing to ensure that he was able to participate in the original hearing. Once the tenant's application was dismissed, section 55 of the *Act* required the Arbitrator to grant the landlord's oral request for an Order of Possession.

I find that the tenant has not submitted sufficient evidence to demonstrate that the original decision was obtained by fraud. I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review.

Overall, I also find that the tenant's 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. The original decision is therefore confirmed.

#### Decision

The decision made on April 8, 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: April 15, 2013

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Residential Tenancy Branch