



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNR FF

### Introduction

On May 16, 2013 Arbitrator XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The hearing had been conducted on May 16, 2013. That decision dismissed the tenant's Application. The tenant did not request an extension of time to apply for Review Consideration.

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 submits in his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control.

### Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision of May 16, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is received by the party, if the decision relates to a landlord's notice to end tenancy for non-payment of rent.

From the decision of May 16, 2013 the issue before the Arbitrator was related to the landlord's notice to end tenancy for unpaid rent. As such, I find the decision and order the tenant is requesting a review on allowed 2 days for the tenant to file his Application for Review Consideration.

From the tenant's submission he received the May 16, 2013 decision on May 23, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on May 27, 2013 (2 business days after receipt of the decision and order). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant provided a letter from the driver of the vehicle stating the tenant was with him in his vehicle when they were rear ended on the road and that they did proceed to the tenant's office as soon as they could to attend the conference call hearing and an estimate dated May 27, 2013 for repairs to a 2001 Volkswagen Eurovan. I accept, based on this documentary evidence, the tenant was unable to attend the hearing of May 16, 2013 for reasons that were unexpected and outside of his control.

The tenant submits in his Application for Review Consideration that he was in a car accident at the time of the hearing. In response to the question on the Application "What testimony or additional evidence would you have provided if you were at the hearing?" the tenant responded "letter from my driver. Estimate from ICBC accredited body shop re rear bumper repair."

While the tenant provided these documents as part of his Application for Review Consideration the question is intended to have the tenant provide information on what testimony he would have provided at the hearing to change the outcome of the hearing not the evidence he has to request the Review Consideration. As such, the tenant has provided no information as to how the outcome of the hearing would have differed had he attended.

While the tenant did not indicate that he was seeking a new hearing because he believes the landlord obtained the decision based on fraud he did provide a response to the following question under the fraud section of the Application: Which information submitted for the initial hearing was false and what information would have been true?

The tenant submits that "I do not know what evidence was submitted but is very possible information was withheld that is material to the situation." The decision itself states what evidence the arbitrator relied upon to make his decision and the tenant made no comment on any of those statements; further while the tenant alludes to information that the landlord may have had that he did not present the tenant does not describe what this information is or how it is relevant to the outcome of the hearing.

Section 81 of the *Act* stipulates that the director may dismiss an Application for Review Consideration if the application:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;
3. 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; or
4. Is frivolous or an abuse of process.

I find the tenant has provided, in his Application for Review Consideration no evidence on which he intends to rely upon or provided no basis on which the decision should be set aside or varied even if a new hearing were granted.

### Decision

For the reasons noted above, I dismiss the tenant's Application for Review Consideration. The decision made on May 16, 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: May 31, 2013