



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC

Introduction

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:

- A. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- B. A party has new and relevant evidence that was not available at the time of the original hearing.
- C. A party has evidence that the director's decision or order was obtained by fraud.

The Tenant has applied under section (c) on the grounds that they were unable to attend the hearing because of circumstances that could not be anticipated and/or were beyond the party's control.

Issues

Has the Tenant met the burden of proof to establish that they were unable to attend the hearing for reasons beyond their control?

Facts and Analysis

The Tenant has applied for a review of the Decision and Orders of an Arbitrator, dated April 30, 2013. The Decision dismissed the Tenant's application to cancel a Notice to end tenancy, as no one appeared at the scheduled teleconference hearing on behalf of the Tenant; however, the Landlord appeared and was granted an Order of Possession. The Tenant indicates on her application for review consideration that she was served the Order of Possession on May 22, 2013 when she found it in her doorway.

The Tenant states on her review application that she was unable to attend because she was at the hospital because she had a large piece of glass imbedded in her foot.

The hearing on April 30, 2013, was scheduled to proceed at 1:00 p.m. As outlined in Residential Tenancy Branch Guideline #RTB-114, hearings will proceed at the scheduled time unless the Arbitrator decides otherwise. There is nothing in the decision of April 30, 2013, that would cause me to conclude that the Arbitrator altered the start time of the hearing.

Residential Tenancy Branch Policy Guidelines suggest that a person requesting a review pursuant to section 79(2)(a) of the *Act* must provide “supporting evidence” to establish that the circumstances which led to the inability to attend the hearing were beyond the control of the applicant and could not have been anticipated. I concur with this guideline.

The Tenant submitted documentary evidence to support her request for review consideration which consisted of: the original decision and order; a BC Provincial Court plan of care for a child; a letter from a lawyer indicating that a family case conference has been scheduled for June 3, 2013; and the Tenant’s written submission. There was no evidence to support that the Tenant was at the hospital during the scheduled hearing time and there is no evidence that would indicate they could have managed to call into the hearing to request an adjournment or to call someone else and ask them to attend on their behalf.

After careful consideration of the aforementioned, I find that the Tenant submitted insufficient evidence to establish that she was unable to attend the hearing because she was being treated at the hospital. In reaching this conclusion I was heavily influenced by the absence of any documentary evidence that proves she was being treated at the hospital, such as a medical note. I therefore find that the Tenant has failed to establish grounds for a review pursuant to section 79(2)(a) of the *Act*.

Section 81 of the *Act* reads:

- (1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:
 - (a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];
 - (b) the application
 - (i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,
 - (ii) **does not disclose sufficient evidence of a ground for the review,**

As per the above, I find that the Tenants’ request for review should be rejected, pursuant to section 81(1)(b)(ii) of the *Act*, as the application does not disclose sufficient evidence of a ground for the review.

Decision

I HEREBY DISMISS this Application to Review pursuant to section 81(1)(b)(ii) of the *Act*.

The original decision of April 30, 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 30, 2013

Residential Tenancy Branch