



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 landlord for a review of a decision rendered by an Arbitrator on April 30, 2013 (the original decision). The original decision considered an application for dispute resolution from the tenant for the cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to the *Residential Tenancy Act* (the *Act*). When the tenant did not attend the scheduled teleconference hearing, the original Arbitrator dismissed the tenant's application without leave to reapply and granted the landlord's oral request for an Order of Possession to take effect on April 30, 2013.

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;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

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 of the original decision on the basis that he tried to call into the original hearing, but could not get connected. He applied for a review on the basis of the first of the grounds outlined above.

The tenant also applied for an extension of time to make his application. However, given that he maintained that he only received the decision letter on April 26, 2013, I find that no extension

of time is necessary, as he filed his application for review on April 30, 2013, the second business day after receiving the original decision.

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 or that could not have been anticipated that prevented him from attending the original hearing. Although he completed the following statements in the section of the application form relating to his request for an extension of time to file his application for review, it seems clear that he attempted to provide the following explanation as to why he was unable to attend the original hearing:

Did call several times but access was not granted to teleconference. Stress due to this procedure has severely aggravated my Chron's disease. Having possibilities of messing my pants. Don't eat for 2 days before leaving home, to be sure.

(as in original)

He added the following comments in the correct section of this application form:

Stress to due this has aggravated my Chron's disease and insomnia making it difficult to leave as I'm unsure when incontinence will strike...

(as in original)

While the above explanations address why the tenant was unable to connect with the teleconference hearing at the appointed time and date, the Application for Review form also asks the application to identify what testimony or additional evidence the applicant would have provided had he been able to participate in the original hearing. The tenant provided the following response.

Their letter doesn't refer to me specifically. They have banned other guests but not asked mine to be banned. Work order was asked for by tenant (peeling paint & black mold) and eviction received the very next day.

Elsewhere in the Application for Review form, the tenant noted that he also had paint chips with black mould and photographs of what he maintained was a "cover-up of a repair job." The tenant did not supply any attachments or further evidence to explain how the above information would have had any bearing on the original decision.

Although I have carefully considered the information that the tenant stated he would have provided had he been able to attend the original hearing, I do not find that any of the issues he

cited would have had a bearing or relevance to the original Arbitrator's consideration of the tenant's application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Whether or not the guests of other tenants were banned from the premises by the landlord or whether or not paint was peeling or "black mould" was present in the tenant's rental unit would have little relevance to the landlord's application to end this tenancy based on the 1 Month Notice.

Under these circumstances, I dismiss the tenant's application for the following reasons:

- the tenant's application does not give full particulars of the evidence on which the applicant intends to rely; and
- 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;

In coming to this determination, I also note that I have checked the records for any contact between the tenant and the teleconference hearing on April 26, 2013. Telus, the teleconference system provider, has no record of anyone other than the Arbitrator and the landlord's two representatives having called into the original teleconference hearing.

The original decision is confirmed.

Decision

The decision made on 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 07, 2013

Residential Tenancy Branch