



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **REVIEW DECISION**

**Dispute codes:** CNC O

This is an application by the tenant for a review of a decision rendered by an Arbitrator on April 22, 2013.

Section 79 of the *Residential Tenancy Act* provides that an Arbitrator's decision may be reviewed if:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her 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 Arbitrator's decision was obtained by fraud.

In this matter, the Applicant applies for review on the following grounds:

1. A party was unable to attend the original hearing due to circumstances that could not be anticipated and that were beyond his or her control; and
2. A party has new and relevant evidence that was not available at the time of the original hearing;

Under Section 81 of the *Residential Tenancy Act* an Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

81(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:

81(1)(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];

81(1)(b) the application:

81(1)(b)(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

81(1)(b)(ii) does not disclose sufficient evidence of a ground for the review,

81(1)(b)(iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the arbitrator the director should be set aside or varied, or

81(1)(b)(iv) is frivolous or an abuse of process;

81(c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

### **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. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

### **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible; and
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when the applicant has evidence which **meets all five criteria** will a review be granted on this ground.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

“New” evidence includes evidence that has come into existence since the hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained before the hearing took place.

Evidence is “relevant” that relates to or bears upon the matter at hand, or tends to prove or disprove an alleged fact and “credible” if it is reasonably capable of belief.

Evidence that “would have had a material effect upon the decision of the Arbitrator” is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

## **FINDINGS**

### **Unable to Attend Hearing**

In his Application for Review the tenant states that he was unable to attend the hearing because he was on a missionary trip to Haiti on the hearing date. The tenant supplied his flight itinerary in evidence. The Decision rendered in this matter shows that the tenant was represented by an advocate at the hearing. The tenant's application on this ground is therefore dismissed because the tenant was in attendance at the hearing by way of his advocate.

### **New Evidence**

The new evidence the tenant/applicant seeks to present is evidence to show that his mission trip to Haiti on the date of the hearing had been planned in paid for in full for some time.

The Decision under review is a Decision to grant the landlord an Order of Possession based on a Notice to End Tenancy Given for Cause (repeated late payment of rent). The fact that the tenant may have been in Haiti at the time of the hearing is irrelevant to this Decision. I therefore find that the application for review does not meet the five criteria set out above that would allow me to order a review in this matter based on "new and relevant evidence". Further, I find that the evidence would not have had a material effect on the decision of the Arbitrator

The original decision therefore 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 06, 2013

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Residential Tenancy Branch



# Residential Tenancy Branch

RTB-136

## Now that you have your decision...

All decisions are binding and both landlord and tenant are required to comply.

The RTB website ([www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)) has information about:

- How and when to enforce an order of possession:  
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:  
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:  
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:  
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:  
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*  
**(Please Note: Legislated deadlines apply)**

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)