



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW DECISION

Dispute Codes: CNC MT

### **Grounds for Review**

Section 79(2) of the *Residential Tenancy Act* (the Act) allows a party to a dispute to apply for a review of the decision. The application for review must contain reasons to support one or more of the following 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.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the issues raised can be dealt with under the provisions of the Legislation that allow a Arbitrator to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or 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 application is frivolous or an abuse of process;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

The Decision and Order under review were based on the tenant's application seeking more time to make an application seeking to cancel a notice to end tenancy given for cause and, if that application was successful, the tenant was seeking to cancel the notice to end tenancy given for cause.

The tenant/applicant did not appear at the conference call hearing scheduled to hear his claim. The landlord/respondent did appear. The tenant's application was dismissed. The landlord requested an Order of Possession at the hearing and under the provisions of Section 55 the arbitrator issued that Order as required.

### **Applicant's Submission**

The tenant's application for review states that the Decision to issue an Order of Possession should be reviewed on the ground that the tenant was unable to attend the hearing.

In his application for review, the tenant's friend states that the tenant would like a new hearing at a pre-set time for him to phone in to make his case. The tenant's friend says he is a neighbour of the tenant and on the day of the hearing the tenant, asked if he could use his phone to call into the hearing. The tenant and his friend dialed a phone number, heard a recording asking them to hold and they waited for over an hour before they realized that they had dialed the wrong telephone number.

### **Unable to Attend**

In order to meet this test, the application for review 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 dispute resolution hearing is a formal, legal process and parties should take 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.

### **Findings**

I find that the application for review shows that the tenant failed to attend the hearing due to lack of reasonable planning, that is to ensure he had dialed the correct phone number, as opposed to by a circumstance that was beyond his control.

Further, the application for review discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

The original Decision and Order made May 22, 2013 stand.

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: June 05, 2013

---

Residential Tenancy Branch