



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNSD

Introduction

The Tenant applied for a review of the Decision issued by the arbitrator on the Tenant's application seeking an order for a refund of double the security deposit. In the decision rendered on May 30, 2013, the Arbitrator found that neither the tenant nor the landlord appeared and the tenant's application was dismissed with leave to reapply.

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 is requesting a review on the grounds that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control.

Issues

This review consideration involved a determination of whether the applicant had met the criteria under the Act to warrant a reconsideration or rehearing of the original application.

The issue to be decided is as follows:

- Whether the tenant was prevented from attending the hearing due to circumstances that were beyond the tenant's control and that could not be anticipated.

The burden of proof is on the Applicant to prove the criteria for a re-hearing has been met under the Act.

Facts and Analysis

The tenant that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control. The Application for Review Consideration included an attached written statement describing the circumstances that prevented the tenant from attending and the tenant described how she used the wrong access code that was provided to access for a different hearing, by mistake.

"The reason I did not have the notice of dispute hearing paperwork for May 30 is that I left it with my lawyer."

I find that the hearing package given to the applicant tenant at the time she made her application for the original dispute resolution hearing had contained specific detailed instructions with respect to the proceedings and the manner in which the parties must sign in to the conference call for the hearing.

The "NOTICE OF A DISPUTE RESOLUTION HEARING" page issued to the tenant on March 7, 2013, included the date and time of the hearing, the toll-free phone number for the participants to call and an access code. The Notice contains a large section in the center of the page titled, "INSTRUCTIONS" that states:

1. At the scheduled time, call one of the numbers available: Vancouver (604) 899-1159 OR, for all other areas, 1(888)458-1598."

Given the above, I find that the tenant, who applied for the hearing in the first place, did not follow the instructions that would have permitted her to participate in the hearing. For this reason, I find that the circumstances that prevented the tenant from participating in the hearing were not beyond the tenant's control and could have been anticipated.

Based on the information and testimony provided by the tenant in this application for Review Consideration, I find that, the tenant has failed to meet the required threshold to establish the criteria which would support any of the stated grounds that would permit a Review Hearing.

Accordingly, the tenant's Request for Review Consideration is hereby dismissed and the Decision issued on May 30, 2013, stands.

Decision

The tenant's application requesting a Review Consideration is not successful and the original decision, dismissing the tenant's application with leave to reapply, 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: June 11, 2013