



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Review Consideration Decision

**Dispute Codes:** CNC ERP FF MNDC OLC RP RR

### Introduction

On March 18, 2013 and April 24, 2013 a dispute resolution hearing was conducted to resolve a dispute between these two parties. Applications were filed by both parties for a monetary claim. Both parties appeared on the first hearing date where it then was adjourned for a continuation. Only the Landlord attended the second hearing date. The hearing continued in the absence of the Tenant. The Tenant's Application was dismissed. The Landlord's application was partially granted. The Tenant has applied for review of this decision.

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.

### Issues

Was the Applicant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control?

### Facts and Analysis

The Applicant states that on the date of the conference call adjourned hearing, the Tenant called into the conference call and waiting for approximately 14 minutes with no other person in attendance. The Applicant states that they made several attempts seeking assistance from an operation without success. The Applicant states that they

also made attempts to call back into the hearing at 2:06pm and again at 2:09 pm without success.

The Applicant has provided evidence of Telus conference call logs which show that she called into the conference call hearing on April 24, 2013. The Applicant's call started at 1:28 pm and ended at 1:43 pm for a 14 minute duration. The log also shows that the Tenant made two additional calls at 2:06 pm and again at 2:09 pm, both for short durations. The Residential Tenancy Branch call log shows that the Arbitrator conducted the hearing with the Landlord for approximately a 44 minute period at the same time.

The file shows that the Residential Tenancy Branch File's copy of the "Notice of an Adjourned Hearing" was different from the Tenant's submitted copy of their "Notice of a Hearing". Both notices display the same date and time, but provide a different access codes. Upon review the Telus call logs clearly show that two difference conference call hearings took place at the same time.

I find that the Tenant has provided sufficient evidence to satisfy me that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control because of an administrative error for the notice of hearing letter.

On this basis, I allow the Application for Review and I Order that a new hearing be conducted, pursuant to section 82(2)(c) of the *Act*.

### Decision

I Order that Arbitrator's decision and Order in this matter, dated May May 7, 2013, **be suspended** until such time that a new hearing is conducted and a decision is reached. I further order that as this was a reconvened hearing that it should properly be reconvened before the original Arbitrator.

**Notices of the time and date of the review hearing will be mailed to the Tenant by the Residential Tenancy Branch. The Tenant must serve the Landlord with the Notice of Review Hearing within 3 days of receiving the Notice. The Tenant must also serve a copy of this Review Decision to the Landlord within 3 days of receipt of the Review Decision.**

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and

service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

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 18, 2013

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Residential Tenancy Branch