



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NORMAN ESTATES LTD.  
and [tenant name suppressed to protect privacy]

## **REVIEW CONSIDERATION DECISION**

**Dispute Codes**      CNR, MNDC

### **Basis for Review Consideration**

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

### **Applicant's Submission**

The application for review consideration states the decision should be reviewed on all three grounds. The applicant as has also requested an extension of time to make this application.

The hearing was conducted on May 30, 2013 and a decision was issued on May 31, 2013. The applicant states that he received the decision on July 15 and made this application on the same day. Although the applicant applied for an extension of time in which to file for review, because he applied within two days of receiving the decision, I find that an extension of time is unnecessary as he cannot be said to have filed beyond the statutorily prescribed timeframe, which is based on receipt of the decision or order.

On the grounds of unable to attend, the applicant states that he was not served the notice of hearing and was unaware that the tenant had made application for dispute resolution. The landlord found out by visiting the Residential Tenancy Branch office that a hearing was scheduled for June 18, 2013, but was not informed of the hearing on May 30, 2013. The applicant states that had he attended he would have provided testimony that peaceful entry access was not provided by the tenants and that rent was not paid. In addition the landlord attached evidence that he had complied with the order from a prior hearing.

## **Analysis**

In order to be granted a review hearing, the applicant 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.

An arbitration hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. The Residential Tenancy Branch provides detailed instructions to the parties to enable them to attend the conference.

In this case, based on the evidence attached to the landlord's application and his reasons for being unable to attend, I find that on a balance of probabilities, it is more likely than not that the landlord did not receive the notice of hearing. It was in the landlord's best interest to attend the hearing and put forth testimony which could have had some effect on the final decision. The landlord has also reported to the police that his mail may have been tampered with which lends credibility to the reason for not receiving a notice for the hearing on June 18, 2013 and the decision dated May 31, 2013.

## **Conclusion**

I order that a new hearing take place and I order that the decision made on May 31, 2013 is suspended pending completion of the new hearing. Notice of time and date of the hearing are included with this Review Consideration Decision for the landlord to serve the tenant within 3 days of receipt of the Notice of Hearing.

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence will result in a decision being made on the basis of information before the Arbitrator and the testimony of the party in attendance at the hearing.

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: July 24, 2013

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Residential Tenancy Branch

