



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

### Introduction

On July 4, 2013 Arbitrator XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order for unpaid rent. The hearing had been conducted on July 4, 2013.

That decision granted the landlord an order of possession and a monetary order in the amount of \$1,483.00. The tenant did not request an extension of time to apply for Review Consideration.

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 submits in her Application for Review Consideration that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control.

### Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether she is entitled to have the order of July 4, 2013 suspended with a new hearing granted because she has provided sufficient evidence to establish that she was unable to attend the hearing for unexpected reasons that were beyond her control.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is

received by the party, if the decision relates to an early end of tenancy; an order of possession for a landlord or a tenant; unreasonable withholding of consent by a landlord regarding assignment or subletting or a landlord's notice to end tenancy for non-payment of rent.

From the decision of July 4, 2013 the issues before the Arbitrator were related to the landlord's not to end tenancy for unpaid rent. As such, I find the decision and order the tenant is requesting a review on allowed the tenant were 2 days to file her Application for Review Consideration.

From the tenant's submission she received the July 4, 2013 order on July 5, 2013 and filed their Application for Review Consideration with the Residential Tenancy Branch on July 8, 2013 (the following business day after receipt of the decision and order). I find the tenant has filed their Application for Review Consideration within the required timelines.

The tenant submits that she was unable to attend the hearing because of a medical emergency. She submits that she had attended her doctor's office on July 3, 2013 and on July 4, 2013 she went to the emergency room at the local hospital at 6:00 a.m. and was there until about 1:30 p.m. The tenant provided no evidence, such as a record of admission or a hospital bracelet, to confirm that she was in the emergency ward.

The tenant submits that if she had attended the hearing she would have showed that the money had been paid to the landlord and the amount claimed by the landlord was wrong. The tenant provided no evidence or any indication of what type of testimony she would have provided if she attended the hearing. In the original hearing file the tenant had provided no evidence at all.

To establish that a party was unable to attend a hearing it is insufficient to simply state that you were unable to attend the hearing, you must provide some type of evidence to establish your inability to attend. In the case where a party had been admitted to hospital emergency ward the party should be able to provide some record of their admittance. As the tenant has provided none I find she has failed to establish that she was in the emergency ward of her local hospital. As such, I find the tenant has failed to establish that she was unable to attend the hearing for reasons beyond her control.

In addition, I find the tenant has provided absolutely no evidence, either to the original hearing or for her review consideration, that would show any basis that the original decision should be changed.

Section 81 of the *Act* stipulates that the director may dismiss an Application for Review Consideration if the application:

1. Does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
2. Does not disclose sufficient evidence of a ground for the review;

3. Discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied; or
4. Is frivolous or an abuse of process.

### Decision

As the tenant has not provided any evidence to establish a ground for a new hearing or that she has evidence that would be sufficient to set aside or vary the original decision I dismiss her Application for Review Consideration.

The decision made on July 4, 2013 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: July 12, 2013