



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

### Introduction

The hearing for which the tenant seeks a review hearing was conducted on July 21, 2013 on the tenant's application to challenge a one month Notice to End Tenancy for cause which was issued on May 31, 2013.

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

In the present matter, the tenant relies on the provision that he was unable to attend the hearing for reasons that could not be anticipated and were beyond his control.

### Facts and Analysis

When the hearing convened as scheduled on July 11, 2012, the applicant tenant failed to appear. The landlord's employee had submitted substantial documentary evidence and appeared with two witnesses prepared to give evidence.

Therefore, after awaiting the absent tenant for 10 minutes, the arbitrator dismissed his application.

On hearing that determination, the landlord's representative requested an Order of Possession in support of the Notice to End Tenancy. As she is compelled to do under

section 55(1) of the *Act*, the arbitrator issued the order on the landlord's oral request and set the effective date at two days from service.

By way of explanation of his absence, the tenant states in his application for review that, "I have been waiting in my appointment for the 21<sup>st</sup> of July which I thought was the correct day; I then received the decision by today (July 18, 2013) by mail.

As stated in Residential Tenancy Policy Guideline 24:

"In order to meet this test, the application and supporting evidence must establish that the circumstances which led to the inability to attend the hearing were both:

- \* beyond the control of the applicant, and
- \* not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable 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."

Clearly, and particularly in view of the fact that the original application for a hearing was made by the tenant, the tenant could have attended the hearing through an exercise in reasonable planning.

The Notice of Hearing of which the tenant was provided copies for himself and to serve on the landlord sets out time and date of the hearing in a separate and prominent block.

With even the slightest effort of preparation for the hearing, the tenant would need to have taken measure of the time available to him and referred to the scheduling with some frequency.

### Decision

I must conclude that the reason given by the tenant for not attending the hearing does not pass the test of a factor that was beyond the tenant's control and could not have been anticipated.

Therefore the application for Review Hearing is dismissed without leave to reapply and the Decision and Order of Possession issued on July 11, 2013 remain in full force and effect.

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 26, 2013

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Residential Tenancy Branch