



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This review consideration decision is in response to an application for review by the Tenant pursuant to section 79 of the *Residential Tenancy Act (Act)*. Specifically, the Tenant is requesting a review of the original decision made by an Arbitrator on August 14, 2013, in which the Arbitrator dismissed the Tenant's application to set aside a Notice to End Tenancy for Unpaid Rent and granted the Landlord an Order of Possession.

The Tenant requested an extension of time to apply for the review. The evidence shows that the Tenant submitted his Application for Review Consideration on August 15, 2013, which is one day after the decision was rendered. As the Tenant has submitted the Application within the legislated time limit, I find there is no need to consider his request for an extension of time to submit the Application.

Section 79 of the *Act* reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
 - (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
 - (b) a party has new and relevant evidence that was not available at the time of the original hearing;
 - (c) a party has evidence that the director's decision or order was obtained by fraud.

The Tenant is requesting the review on the basis that a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control and he has new and relevant evidence that was not available at the time of the original hearing, pursuant to sections 79(2)(a) and 79(2)(b) of the *Act*.

Issues

Has the Tenant established grounds for review?

Facts and Analysis

In support of the application for review partly pursuant to section 79(2)(a) of the *Act*, the Tenant declared that his roommate was “not available”. The Tenant declared that the roommate was “unaware rent not returning”. Although it is not clear, I find it possible that the Tenant is declaring that the roommate is not returning to the rental unit and is not aware that rent had not been paid.

To establish grounds for review pursuant to section 79(2)(a) of the *Act*, the Tenant needs to establish why “a party” could not attend the hearing; why that reason was beyond the control of the party; and why that could not have been anticipated. A party to a proceeding is generally understood to be either an applicant or a respondent.

In these circumstances the roommate was not named as a party to the proceedings. I therefore cannot conclude that the roommate’s failure to attend the hearing constitutes grounds for a review pursuant to section 79(2)(a) of the *Act*.

I note that at the hearing the Tenant declared that his roommate had been incarcerated; that the roommate was released approximately two weeks prior to the hearing; and that the roommate has shown no interest in returning to the rental unit. I further note that there is no indication that the Tenant asked that the roommate be included as a Respondent or that the hearing be adjourned for an adjournment for the purposes of having the roommate appear at the hearing.

I also note that there is no indication in the Application for Review Consideration that the roommate would provide testimony that contradicts the undisputed evidence that rent was not paid or that a Notice to End Tenancy for Unpaid Rent was served, which are the two issues that are germane to the Arbitrator’s decision.

In support of the application for review pursuant to section 79(2)(b) of the *Act*, the Tenant declared that he wishes to continue to reside at the rental unit and to pay rent of \$450.00. As the Tenant was present at the hearing and could have made this submission at the hearing, I cannot conclude that this is new evidence. As the Tenant’s desire to pay rent does not negate the fact that he has not paid rent, I find that this declaration is not relevant to the Arbitrator’s decision that rent was not paid and that the Landlord has the right to end this tenancy on that basis. I find that the Tenant has not established that he has new and relevant evidence that was not available at the time of the original hearing.

Decision

Section 81 of the *Act* reads:

(1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 [*correction or clarification of decisions or orders*];

(b) the application

(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

(ii) does not disclose sufficient evidence of a ground for the review,

(iii) 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

(iv) is frivolous or an abuse of process;

(c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

(2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

I dismiss the Tenant's application for review, pursuant to section 81(1)(b)(ii) of the *Act*, as he has failed to disclose sufficient evidence of a ground for review.

The Arbitrator's original decision and order of August 14, 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: August 20, 2013

Residential Tenancy Branch