



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

The tenant has applied for a review consideration of a decision dated July 30, 2013, which granted the landlord an order of possession and a monetary order for unpaid rent, which was based on a 10 Day Notice to End Tenancy for unpaid rent issued on June 17, 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.

The tenant has applied on grounds 1 for the review consideration.

Issues

1. Was the tenant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

Facts and Analysis

The tenant writes in their application that they were unable to attend the hearing because, "On July 30, when I went home my room-mate and I went to the store when we were on bikes enroute home a vehicle hit us causing injury to back and leg- had to wait for police & medical attention...til 4:30pm."

[Reproduced as written]

The tenant writes in their application that had they attended the hearing they would have provided the following testimony, “that there is no rent owed and that I should not be evicted as property owner was liable for lost of wages for 6 weeks of my room-mate due to injury cause by falling through balcony....”

[Reproduced as written]

In this review consideration the tenant is claiming to have been in accident and was unable to attend as a result. While the tenant has provided a police number that number does not provide any details of the incident, such as a copy of a police report which would indicate the date and what was the circumstance that created the report. The tenant has not provided any medical evidence, such as a medical note.

As a result, I find the tenant has failed to provide sufficient evidence to support that they were unable to attend as a result of than accident.

However, even if I accepted the tenant’s evidence that they were unable to attend due to circumstance beyond their control, I find the outcome of the hearing would not have changed as the tenant did not dispute the 10 Day Notice to End Tenancy for unpaid rent. The tenant was presumed to have accepted that the tenancy ended on the effective date of the notice. The landlord was entitled to an order of possession.

Further, at the original hearing the evidence of the landlord evidence was “...The tenant provided a cheque for June 2013 rent which was returned to the landlord as N.S.F. Therefore, the tenant failed to pay rent in the month of June 2013 and on June 17, 2013 the landlord served the tenant with a notice to end tenancy for non-payment of rent.”

[Reproduced as written]

The tenant’s writes in their application for review consideration that rent was not owed as the property owner was liable for lost of wages for my room-mate due to injury cause by falling through a balcony. However, under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant has provided no evidence that they had the right under the Act to do so, such as an order from an arbitrator granting them monetary compensation and then authorizing the tenant to deduct that amount from rent owed from June 2013.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant's application must be dismissed.

Therefore, I find the decision and orders made on July 30, 2013, stand and remain in full force and effect. The tenant's application for review is dismissed.

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 12, 2013

Residential Tenancy Branch