



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC OLC PSF RR

### Introduction

This is an application by the tenant for a review of a decision of the director dated August 15, 2013.

The tenant applied for a review on the grounds he was unable to attend the hearing due to circumstances that could not be anticipated or were beyond his control; and that he has new and relevant evidence that was not available at the time of the original hearing.

### Issues

Has the tenant provided sufficient evidence to support the indicated grounds for review?

### Facts and Analysis

#### *Original Hearing and Decision*

The tenant applied for dispute resolution in early July 2013. The hearing was scheduled for August 15, 2013. The landlord attended the teleconference hearing but the tenant did not. The arbitrator dismissed the tenant's application.

#### *Review Applicant's Submissions*

In the application for review, the tenant submitted that he was unable to attend the hearing because a mistake was made by the office of the tenant's lawyer, and the hearing and "bring forward" dates were not set in the tenant's lawyer's calendar. No evidence of the tenant was filed, and neither the tenant or his lawyer attended the hearing.

In his review consideration application, the tenant submitted documentary evidence that he would have submitted as evidence to support his claim.

### *Analysis on Review*

The tenant or his lawyer, acting as the tenant's agent, filed the tenant's application for dispute resolution in July 2013. The tenant or his lawyer received the hearing package, including the notice of hearing. The tenant or his lawyer was therefore clearly aware that a hearing date had been set, and that a hearing would take place. The fact that the office of the tenant's lawyer failed to make note of the hearing date does not constitute a circumstance that could not be anticipated and was beyond the control of the tenant or the tenant's agent. I therefore find that the tenant is not entitled to a review hearing on the ground that he was unable to attend the hearing.

The tenant could have submitted evidence prior to the hearing. In fact, the tenant indicated in his review consideration application that he would have submitted documentary evidence, had not the office of the tenant's lawyer failed to schedule the hearing. Therefore that evidence was not new, and was available at the time of the hearing. The tenant could have submitted all of this evidence prior to the hearing, but he did not do so.

I find that the additional evidence indicated in the tenant's application for review was not new or unavailable at the time of the original hearing. The tenant has therefore failed to provide sufficient evidence to show that he had new and relevant evidence that was not available at the time of the hearing.

I note that any prejudice or loss that the tenant may have suffered because his lawyer's office failed to properly make note of the hearing date is a matter that the tenant may seek to address in a different forum.

### Decision

I dismiss the application for review and confirm the original decision of August 15, 2013.

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 30, 2013

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Residential Tenancy Branch