



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNR ERP FF MNDC MNR RP RR

Introduction

This Application was filed by the tenant on September 12, 2013, seeking a Review Consideration of a Decision dated September 09, 2013. The Decision dismissed the tenant's application **with leave to reapply** as neither the applicant tenant or the respondent landlord attended the teleconference hearing.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 the first and second grounds.

Issues

- Has the tenant provided sufficient evidence to support that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the control of the tenant?
- Has the tenant provided sufficient evidence that the tenant has new and relevant evidence that was not available at the time of the original hearing?

Facts and Analysis

The Application contains information under section C1, on why the tenant could not attend the original hearing held on September 9, 2013.

The tenant writes:

“The DRH Notice was emailed to me as a PDF attachment that I was not able to open (see exhibit 1) to view the phone access code to call in for the hearing. At approximate 8:50 am September 9th, I attempted to call in to get a copy of the code verbally to no avail. Please see exhibit A, a video of the land line telephone screen showing that I was on hold for 15 minutes. I then proceeded to request a call back to explain why I couldn’t call in without a code. I received the call back from Tenancy Branch 2 hours later via voice mail. I have a witness [name of witness] see attached exhibit B (sworn statement). I had all my supporting documents on hand for the hearing. Please see video exhibit A.”

[Reproduced as written]

The Application contains information under section C2, on why the tenant has new and relevant evidence with respect to the hearing held on September 09, 2013.

The tenant writes:

“Exhibit C”

[Reproduced as written]

The tenant submitted a copy of a four-page e-mail dated September 11, 2013 marked as “Exhibit C”, a copy of the Decision dated September 09, 2013, a USB drive, and a one page sworn statement from a witness, RB, that indicates that the tenant attempted multiple times to retrieve the code on September 9, 2013.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the first ground for Review, the tenant must prove, based on a balance of probabilities, that the circumstances that prevented the tenant from attending the hearing (which was held by telephone conference call), were both unanticipated and beyond the tenant’s control.

Policy Guideline 24, which deals with Review Considerations, sets out the following about this ground of Review:

“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.”

[Reproduced as written.]

The tenant confirmed in their Review Application that the tenant received the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), however, was unable to open the document which contained the conference call dialing codes due to the attachment being in PDF format.

Section 81 of the *Act* states:

81 (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;

[emphasis added]

Based on the above, I find that tenant’s submission that the tenant was unable to open the PDF attachment which contained the conference call dialing codes, means the tenant could not have served the respondent landlord with the Notice of Hearing in accordance with Rule 3 of the Rules of Procedure. The tenant’s inability to open the

Notice of Hearing document would have resulted in a service issue leading to the tenant's application being dismissed with leave to reapply. Therefore, **I dismiss** the tenant's Application on the first ground, as the tenant confirms that they were unable to open the PDF attachment, which would have resulted in the tenant being unable to serve the landlord with Notice of a Dispute Resolution Hearing as required by the Rule 3 of the Rules of Procedure.

In order to be successful on the second ground for review, the tenant must prove that new and relevant evidence exists that was not available at the time of the original hearing.

The tenant wrote "Exhibit C" in the Review Application under the section entitled "List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant". I find the tenant failed to include details on "why" Exhibit C, a four-page e-mail, was not available at the time of the hearing, and "how" it is relevant. Given the above, I find the tenant has provided insufficient evidence to support that the tenant has new and relevant evidence that was not available at the time of the original hearing. Therefore, **I dismiss** the tenant's Review Application on the second ground due to insufficient evidence.

As the tenant's Application has been dismissed on both grounds, the Decision issued September 9, 2013, stands and remains in full force and effect.

I note that the September 9, 2013 Decision dismissed the tenant's application **with leave to reapply**, which means the tenant is at liberty to reapply with any and all evidence the tenant determines to be relevant to their application. If the tenant is unable to open a PDF attachment, the tenant may wish to attend the Burnaby Residential Tenancy Branch office or a Service BC office near them and submit an application in person.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 20, 2013

Residential Tenancy Branch