



# 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 applied for a review of the Decision issued by the arbitrator on the Tenant's application seeking monetary order against the landlord, and Order to force the landlord to provide services and facilities required by law, an order to allow the tenant to reduce rent for repairs, services and facilities agreed-upon but not provided and the cost of the application.

In the decision rendered on May 30, 2013, the Arbitrator found that because the tenant failed to appear to present his claim and the respondent landlord did appear, the tenant's application was dismissed without leave to reapply.

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 is requesting a review on the grounds that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control.

### Issues

This review consideration involved a determination of whether the applicant had met the criteria under the Act to warrant a reconsideration or rehearing of the original application.

The issue to be decided is as follows:

- Whether the tenant was prevented from attending the hearing due to circumstances that were beyond the tenant's control and that could not be anticipated.

The burden of proof is on the Applicant to prove the criteria for a re-hearing has been met under the Act.

### Facts and Analysis

The tenant stated that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control. The Application for Review Consideration included a written statement describing the circumstances that prevented the tenant from attending and the tenant described how she used the wrong access code that was provided to access for a different hearing, by mistake.

*"At 10:50 am on Wednesday August 28, the car I was in on vacation in Ontario got pulled over by the OPP. (Ontario Provincial Police). I was detained & handcuffed & put in the back of the police cruiser until 11:40ish. I was released & allowed to continue on my way. I tried to phone the number provided but was too late for the hearing. The constable gave me their name, badge # & file # for proof. (Reproduced as written)"*

The tenant attached a business card from the RCMP Kamloops Detachment. Also attached was a photocopy of a hand-written note with "P/C" followed by a last name and some numbers. At the bottom of the note was hand-written, "East Algoma Thessalon Detach" .

I find that the hearing package given to the applicant at the time the application was filed, contained specific detailed instructions with respect to the hearing proceedings. The "NOTICE OF A DISPUTE RESOLUTION HEARING" page that was provided included the date and time of the hearing, the toll-free phone number for the participants to call and an access code. The Notice contains a large section in the center of the page titled, "INSTRUCTIONS" that states:

*1. At the scheduled time, call one of the numbers available: Vancouver (604) 899-1159 OR, for all other areas, 1(888)458-1598."*

I find that the tenant failed to appear at the appointed time. In the Application for Review Consideration, the tenant submitted a statement that outlined specific circumstances that prevented him from calling in. Although the tenant also submitted evidentiary material in the form of a business card and a handwritten note with an

officer's name and numbers on it, I find that the tenant failed to provide sufficient documentary evidence to prove that the tenant was prohibited from attending or participating in the hearing due to an unforeseen circumstance on the particular date and at the precise time of this hearing.

I find that the card from the Kamloops RCMP and the handwritten note with a name and numbers, purporting to be written by the officer who detained the tenant in Ontario, do not adequately support the tenant's position that a review hearing is justified. I find that the tenant has not successfully met the burden of proof to confirm that he was not able to attend the hearing held on the tenant's application because of circumstances that could not be anticipated and were beyond the tenant's control.

Given the above, I find that the tenant's application for Review Consideration must be dismissed as it failed to meet the required threshold to establish the criteria which would support any of the stated grounds that would permit a Review Hearing.

Accordingly, I hereby dismiss the tenant's Request for Review Consideration and the Decision issued on August 28, 2013, stands.

#### Decision

The tenant's application requesting a Review Consideration is not successful and the original decision, dismissing the tenant's application with leave to reapply, stands.

.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: September 19, 2013

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Residential Tenancy Branch