



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On September 23, 2013 a dispute resolution hearing was conducted to resolve a dispute between these two parties. The Tenant had applied to cancel a notice to end tenancy issued for cause. The Tenant did not attend the hearing. The Landlord attended the hearing by conference call with the Arbitrator at 9 a.m. on September 23, 2013 and gave undisputed testimony. The Tenant's application was dismissed without leave to reapply. The Landlord made an oral request for an order of possession which was granted. The Tenant has applied for a review of this decision.

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.

Issues

Was the Tenant unable to attend the hearing due to circumstances that could not be anticipated and were beyond their control?

Does the Tenant have new and relevant evidence that was not available at the time of the original hearing?

Facts and Analysis

The Applicant states under "unable to attend" that "my hearing was listed at 11am Sept 23 2013. I though hearing was on a Tuesday Sept 23 at 11 am as I got date wrong due to stress. If I were to have called in Monday Sept 23 It would have been at 11 am

astated on my order (Dispute Resolution) and not at 9am when the hearing took place.” The applicant states that the testimony or evidence that would have been provided at the hearing, “Cannot tolerate bedbug poisonous spray and have my personal belongings touched by others is illegal. Poisonous spray has adverse effect on my health as I am not able to breath properly.”

Under “new and relevant evidence” the applicant wrote, “I have listed 11am for time of hearing at Sept 23 2013 not 9am when hearing took place. I need new hearing because of this reason as it is an error by residential tenancy as I have proof on my Sept 12 2013 dispute resolution.”

The Tenant has provided a copy of the notice of hearing letter dated September 12, 2013 which states that the hearing was scheduled for “2013-09-23 at 11:00 am.” A review of the file and the online database confirm that the hearing was scheduled for September 23, 2013 at 11:00am. The applicant states that if he thought the hearing was on Tuesday September 23 at 11am when the hearing was on Monday September 23, 2013. A review of the calendar confirms that September 23, 2013 is a Monday and not the Tuesday as mistaken by the applicant. The applicant does not state that he called into a conference call hearing on either Monday or Tuesday. The decision dated September 23, 2013 states that the hearing took place at 9am on September 23, 2013 as opposed to the 11am scheduled time. A Telus conference call summary was reviewed showing that the dispute resolution hearing did infact take place at 11am on Monday, September 23, 2013 as scheduled. The summary confirms that both the Arbitrator and the Landlord conference call lasted approximately 11 minutes.

I find that the decision dated September 23, 2013 suffered a typographical error that should read that the conference call hearing took place at 11am as opposed to the 9am indicated on the decision. The applicant did not call into the scheduled hearing time or provide any evidence that he called into the hearing a day late as stated in his application for review. In fact it clearly shows that the Tenant was mistaken that the scheduled September 23, 2013 date hearing was on tuesday instead of the correct day on monday. In any event, the applicant has failed to provide any relevant evidence that could change the original decision or that he was unable to attend due to circumstances beyond his control. The decision dated September 23, 2013 is upheld and the Tenant’s application for review is dismissed.

Decision

The Tenant’s Application is dismissed.

The decision made on September 23, 2013 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 27, 2013

Residential Tenancy Branch