



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

This is an application by the tenant for a review of a decision of the director dated September 10, 2013.

The tenant applied for a review on the ground that she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control.

Issues

Has the tenant provided sufficient evidence to establish that she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control?

Facts and Analysis

Original Hearing and Decision

The tenant applied for monetary compensation and named the landlord as respondent. In the hearing on September 10, 2013, neither the tenant nor the landlord called in to the teleconference hearing. Accordingly, the arbitrator dismissed the tenant's application with leave to reapply.

Tenant's Submissions

In the application for review, the tenant indicated that she never received a hearing package and therefore was unaware of the hearing date and time. The tenant submitted her online application for dispute resolution on July 31, 2013. On August 1, 2013, the tenant received an email indicating that her application was approved and an information officer would contact the tenant with a hearing date. In her review application the tenant indicated that on September 9, 2013 she emailed the RTB

because she had not yet received her hearing package. One week later the tenant received the decision indicating that her application had been dismissed. The tenant called the RTB and explained the situation. The tenant was told that there was an attachment on her August 1, 2013 email that included the hearing package. The tenant indicated that she re-checked her email, but there was no attachment.

I note that the Residential Tenancy Branch records show an email sent to the tenant on August 1, 2013 at 3:18 p.m., which shows that the Notice of Hearing, instructions and the hearing package were attached to the email. This was not the same email that the tenant must have received earlier on August 1, 2013.

Analysis on Review

The tenant indicated on her application for review that she did not follow up on the first email she received, on August 1, 2013, until making an email enquiry on September 9, 2013, more than one month later. If the tenant did not receive the second email with the attached hearing package, it was well within the tenant's control to contact the Branch to enquire why she had not received the package. I find that the tenant has failed to establish that she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control.

Decision

I dismiss the application for review and confirm the original decision of September 10, 2013. I note that it is open to the tenant to reapply.

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: October 8, 2013

Residential Tenancy Branch