



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

On September 17, 2013 a non-participatory matter was conducted by way of a Direct Request proceeding where the landlord applied for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Arbitrator dismissed the landlord's application with leave to re-apply because the landlord had failed to provide a tenancy agreement that contained the starting date of the tenancy which was an essential document required for a Direct Request proceeding to be successful.

As a result, both the landlord and tenant made applications for a participatory conference call hearing which was scheduled for October 21, 2013 at 2:00 pm.

The Arbitrator noted in the decision for this hearing that the tenant failed to appear for the conference call hearing and as a result the tenant's application was dismissed without leave to re-apply. The landlord was granted an Order of Possession and a Monetary Order.

Division 2, Section 79(2) under the *Residential Tenancy Act* (referred to as the *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.

As a result, the tenant has applied for a review of the decision dated October 21, 2013 on the basis of grounds 2 and 3 above.

Issues

- Does the tenant have new and relevant evidence that was not available at the time of the original hearing?
- Does the tenant have evidence that the Decision was obtained by fraud?

Facts and Analysis

Under the second ground on the review application, New and Relevant Evidence, the tenant writes that he attended the conference call hearing on October 21, 2013 at 2 pm. The tenant supplied a statement from a witness who states that he was present when the tenant dialed into the hearing at 1:59 pm after which the tenant was told by the Residential Tenancy Branch that there was no scheduled conference call. The statement states that records are available on request.

In my analysis of the tenant's review application under this section, it is clear to me that the details provided by the tenant for the second ground would also be applicable to the first ground, Unable to Attend. As a result, I have analysed the tenant's evidence under the first and second grounds together.

The conference call hearing system is operated by an independent third party which maintains a log of the time a caller attempts to access the system using the access codes provided by the Residential Tenancy Branch to the applicant and respondent. The log for the hearing at issue shows that the Arbitrator and the landlord both used the access code to successfully access the hearing at the scheduled time. The Arbitrator explains in his decision that the conference call ended at 2:15 pm during which time the tenant did not dial into the conference call. The log supports the Arbitrator's decision and does not show any attempt by the tenant to access the hearing during this time.

However, the log does show that the tenant phoned into the system at 2:18 pm on October 21, 2013 and disconnected 25 seconds later. However, this was after the time the conference call had been concluded and ended by the Arbitrator.

I am persuaded by the evidence that the tenant failed to phone into the system at the time scheduled for the hearing and I find that the tenant's witness statement does not match the system records. As a result, I find it was within the control of the applicant to join the hearing at the scheduled time and as he failed to do so, I find that the application for review on the first two grounds must fail.

Under the third ground on the review application, Fraud, the tenant writes that the rental agreement had no start date or the landlord's signature on it but on the 'latest service' by the landlord, it did contain the signature. The tenant provided no supporting documents to support this ground.

Policy Guideline 24 to the *Act* states that the evidence being provided under this ground must show that it was obtained by fraud and that it was a significant factor in the making of the decision.

In the tenant's review application, the tenant failed to provide evidence to support the fact that the tenancy agreement did not contain the landlord's signature. However, whilst the failure to have a tenancy agreement is a breach of the provisions of the Residential Tenancy Regulation, it does not mean that a tenancy does not exist. The landlord is still able to apply for an Order of Possession through a participatory hearing process if the tenant has failed to pay rent irrespective of whether there is a signed written tenancy agreement in place.

In the first non-participatory hearing on September 17, 2013, the landlord's application did not succeed because the tenancy agreement was incomplete and this is a specific requirement for the Direct Request proceeding. However, it is not an essential requirement that a complete written tenancy agreement is produced by the landlord for a participatory hearing as the Arbitrator, during the hearing, was satisfied that a tenancy existed between the landlord and tenant and accepted the undisputed evidence of the landlord based on the failure of the tenant to attend the hearing.

In addition, I find that a written tenancy agreement was not a significant factor in the making of this decision as the issue was about the failure of the tenant to pay rent and this does not necessarily rely on there being a completed signed written tenancy agreement for a tenancy to be established.

As a result, I find that the application for review on the third ground must also fail.

Decision

For the reasons set out above, I dismiss the Application for Review of the tenant.

The Decision made on October 21, 2013, stands and remains in full force and effect.

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 30, 2013

Residential Tenancy Branch