



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNR OPR

Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on July 9, 2013 (the original decision), with respect to an application for dispute resolution from the landlord.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied.

Issues

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.

In this case, the tenant applied for dispute resolution on the basis that she was unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control, the first of the grounds outlined above.

Facts and Analysis

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were **both**:

- beyond the control of the applicant, and
- could not be anticipated.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing.

In the Application for Review Form, the tenant was asked to list the reasons that she was unable to attend the July 9, 2013 hearing. The tenant responded as follows:

I had to leave for funeral to Australia. The time of hearing I was flying in the airplane.

The tenant also attached a statement in which she confirmed that she had to leave for the funeral of her brother-in-law in Australia on July 8, 2013. She stated that she “did leave a note and a copy of my ticket at Tenancy Board in Burnaby.” She also attached a copy of her brother-in-law’s death certificate and information regarding the funeral service. She also included a copy of the receipt she received from the landlord for her payment of her damage (security) deposit and advance rent that she claimed to have paid in March 2012 when her tenancy began.

In considering this application for review, I have taken into account the following portion of the introductory comments provided in the Arbitrator’s decision:

...The tenant faxed information that indicates that she had flown to Australia on July 8, 2013 and had a return ticket returning on July 23, 2013. The information did not seek an adjournment and did not provide reason why she was unable to participate in the conference call hearing either through the use of an agent or directly from Australia. I determined it was not appropriate to grant an adjournment and proceeded with the hearing...

From the original decision, it would seem that the Arbitrator was well aware of the tenant’s circumstances when he decided to proceed with the July 9, 2013 hearing of the landlord’s application for a monetary award for unpaid rent, losses arising out of this tenancy and the recovery of the landlord’s filing fee. Based on the information supplied by both the tenant and in the original decision, it is apparent that the tenant had sufficient time to provide the Residential Tenancy Branch (the RTB) with a fax of her circumstances and a copy of her return ticket to Australia. She clearly had at least some advance warning of her pending flight and knew that she would be airborne when the hearing was scheduled to occur. The Arbitrator based his decision in part on the tenant’s failure to provide an explanation as to why she could not have obtained an agent to either represent her interests at the hearing or request an adjournment of the July 9, 2013 until the tenant could return from Australia.

I accept that the tenant has supplied additional information in her application for review regarding the circumstances surrounding her trip to Australia that were not before the

Arbitrator. While I find that the tenant's application has demonstrated that she was unable to attend the original hearing due to circumstances beyond her control, I do not find that she has shown that her failure to attend could not have been anticipated. In fact, she submitted a fax to the RTB without a request for an adjournment. She has not explained why she could not have had someone call into the teleconference call to seek an adjournment on her behalf or represent her at this hearing.

I also find that the information she has supplied regarding the landlord's retention of her security deposit is a separate issue, one that was not considered at the original hearing. The original decision was silent as to who should be allowed to retain the security deposit. Although the tenant has supplied a copy of a March 1, 2012 receipt for "Advance Rent" it is unclear whether this was an additional security deposit or to be applied to some other period of this tenancy. If the tenant believes that she is entitled to obtain a return of her security deposit or a return of other funds she paid to the landlord at the beginning of her tenancy, she is at liberty to submit her own application to obtain a monetary award for these items. These issues were not before the Arbitrator and he has made no determination regarding her claim for entitlement to these funds. For these reasons, I find that the evidence the tenant has supplied does not support her application for review of the original decision and would have no bearing on the Arbitrator's decision regarding the issues properly before him at the original hearing.

I dismiss the application for review on the basis that the application discloses insufficient evidence of any ground for review. I also find that the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the Arbitrator should be set aside or varied. Overall, I also find that the tenant's application is somewhat unclear as to the evidence upon which she intended to rely and had little bearing on the matters properly before the Arbitrator at the original hearing. The original decision is therefore confirmed.

Decision

The decision and Order made on July 9, 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 04, 2013

Residential Tenancy Branch