



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: CNC MNDC

### Introduction

On August 28, 2013 a hearing was conducted to resolve a dispute between these two parties. The Tenant had applied for an order to cancel the notice to end tenancy issued for cause and a monetary claim for money owed or compensation for damage or loss. The Tenant did not attend. The Landlord attended to respond to the application. The Tenant's Application was dismissed for want of jurisdiction. The Tenant has applied for 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.

In this application the Tenant relies on section 79(2) (a) and (c) of the Act, but has provided details under sections 79(2) (a), (b) and (c) of the Act.

### **Unable to Attend**

In order to meet this test, the applicant 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.

The Landlord sets out the reasons for being unable to attend, as follows:

- The day of the hearing was cheque issue day & I was unable to access my bank to get money that day due to needing an appointment for the bank that would have allowed me funds to get downtown.

As to what evidence the Tenant would have presented in the event of his attendance to the hearing, in the application, he states:

-I have police file numbers regarding verbal and physical assault by my building manager. A lock was put on my door by this individual and I also have witnesses to these issues from Langley RCMP.

### **New and Relevant Evidence**

The Tenant states under new and relevant evidence:

- Police File# A- violence & threats; police told them to leave me alone.  
B- put lock on my door.
- not able to attend hearing due to early reasons
- Landlord threw out all my belongings before arbitrator hearing.

### **Fraud**

Under Fraud, the Tenant has state the following under the three elements required to show that the decision or order was obtained by fraud.

False information submitted was:

- My Landlord G.D. said he lives at t he residence and he does not.

The person submitting the information knew that it was false:

- He doesn't live there and I was told by a RTB employee that G. Stated this to be true.

How the false information was used:

- Just his presence gave him an advantage because he doesn't live there & him stating he lives there means he can accuse me wrongfully.

However, the Tenant has also requested an extension of time to make the application, this must be addressed prior to any other consideration. Section 80 of the Act speaks to Time limits to apply for review. Pursuant to the particular circumstances of the decision and order, statutory time limits are 2, 5 or 15 days "after a copy of the decision or order is received by the party." In this case, the Tenant documented in his application that he did not receive a copy of the decision dated July 23, 2013, but that he "phoned in and asked". Upon review of the decision it is clear that this is an error as the application was filed July 23, 2013 and that on the hearing date of August 28, 2013

a decision was made on the same date. I deem that the Tenant was informed and filed for review on September 25, 2013. The Tenant has provided no other details.

Reasons cited in the Tenant's application for the late submission is:

-I was unable to attend the conference due to unforeseen circumstances that could not be adjusted due to personal matters.

Section 66 of the Act speaks to Director's orders: changing time limits, and provides in part as follows:

-66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81(4) [decision on application for review].

Residential Tenancy Policy Guideline #36 speaks to "Extending a Time Period" and provides in part:

-The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do sometime at the time required is very strong and compelling. Further, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find that the reasons provided for the late filing of the Tenant's application for review do not meet the exceptional circumstances required under section 66 of the Act to extend a time limit.

I hereby deny the Tenant's request for an extension of time to apply for review. The original decision dated August 28, 2013 is hereby confirmed.

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 04, 2013

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Residential Tenancy Branch