



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR MNSD

Introduction

This is an application by an individual who identified himself as the tenant (the tenant) for a review of a decision rendered by on October 1, 2013 (the original decision), with respect to an application for dispute resolution from the landlord. I note that the correct dispute address for this rental unit, the tenant's application for review and the original hearing of the landlord's application on October 1, 2013 was for the rental unit at the address as it appears above and not as identified on the original decision. Either party can apply for a correction of the dispute address appearing on the original decision and Order if they so desire.

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 requested a review of the original decision because he maintained that he was unable to attend because of circumstances that could not have been anticipated and were beyond his 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 he was unable to attend the October 1, 2013 hearing. The tenant responded as follows:

I never received an eviction notice or a dispute resolution package at all. I was unaware of the hearing. My landlord was charged with break + enter and mischief and I've brought the police file #. There was a great deal of damage to my personal property as well as damage to the house when my landlord removed the door.

In response to the request to identify what testimony or additional evidence the tenant would have provided had he attended the hearing, the tenant responded as follows:

I have a list of personal property damaged as well as pictures showing damage to house and property. I am going to put a monetary order for costs to replace damaged personal property.

The only material that the tenant attached to this application for review was a photocopy of a business card from a police officer citing a police file #.

I note that the only portion of the landlord's application for dispute resolution that The Arbitrator considered in her October 1, 2013 decision was the landlord's application for an order of possession. She noted that she could not consider the remainder of the landlord's application because his posting of his application on the tenant's door was not one of the ways for serving notice of an application for monetary compensation from another party required by section 89 of the *Act*.

The Arbitrator was satisfied that the landlord had served his application for dispute resolution in which he was seeking an Order of Possession by posting the application on the tenant's door. The Arbitrator determined that the tenant was deemed served with this notice of the October 1, 2013 hearing on September 4, 2013.

Although the tenant stated that he was not served with either the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and the landlord's dispute

resolution hearing package, most of his application appears to address circumstances that occurred after the original decision was issued. The tenant has claimed that he suffered considerable damage to his personal property as a result of the landlord's alleged removal of the door to his rental unit. The tenant's application appears to address a subsequent incident that has given rise to a possible new application from the tenant for a monetary award against the landlord. None of this material was before The Arbitrator on October 1, 2013. In fact, the only decision involved the landlord's claim that rent remained owing for August 2013. As she accepted that this rent was owing and that the landlord had served the tenant with a 10 Day Notice for this rent, The Arbitrator issued an Order of Possession to the landlord.

In his application, the tenant referred to a police file number and charges laid against the landlord. However, the tenant provided nothing other than a police officer's card containing a police file number. I have no access to police files unless a party provides copies as part of evidence submitted to the Residential Tenancy Branch. Without the police file or evidence from the police about its contents, the tenant's reference to an outstanding police file adds little of value to my understanding of his application for review.

In general, I find the tenant's application confusing, disjointed and unclear. He has not provided any information as to whether or not he paid his August 2013 rent, the issue that led to the Arbitrator's decision and Order of Possession. Whether or not subsequent events entitle him to a monetary award has little bearing on the matter that was properly before the Arbitrator, and before me as part of this review application. Without any relevant information on his payment or non-payment of rent for August 2013, I find that the tenant has not demonstrated how his participation at the October 1, 2013 hearing would have made any difference to the decision and Order issued by the original Arbitrator.

I dismiss the tenant's application for review as I find that his application does not give full particulars of the issues submitted for review or of the evidence on which he intends to rely. Rather, I find that his application appears to rely on events that happened long after the 10 Day Notice and the original decision were issued. I also dismiss this application as the tenant has not disclosed sufficient information on which, even if the submission in the application were accepted, the original decision and Order of the arbitrator should be set aside or varied. The original decision and Order are hereby confirmed.

Decision

The original decision and Order of October 1, 2013 stand and remain in force.

As noted above, either party can apply for a correction of the dispute address appearing on the original decision and Order if they so desire.

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 23, 2013