



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Manufactured Home Park Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

The tenant has applied for a review consideration of a decision dated September 23, 2013.

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.

The tenant has applied on ground 1 for the review consideration

Issue

1. Was the tenant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

Facts and Analysis

The tenant writes in their application that they were unable to attend the hearing because, "see affidavit"

The affidavit in part reads,

"with respect to notification, Page 2 of the Decision: it is true the Tenant and her legal advocacy office were aware of the date of reconvened hearing as September 23, 2013 at 1:30 pm."...

...“the issue here is that the tenant or her autistic daughter misplaced the Notice of Adjourned Hearing and accordingly did not have the access code necessary to join the hearing.” ...

...“in all of these circumstances, and dealing with the above chaotic domestic , she had no idea that she had to keep track of the Notice of Re Convened Hearing, as it had a new access code, believing the information in the first Notice of Hearing also applied to the Re Convened hearing. She then received a courtesy call from her advocate on the Thursday before the hearing asking her to ensure she had the notice which would have a new access code, as the office did not have it.”

[Reproduced as written]

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

- beyond the control of the applicant; and
- not anticipated.

A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In this case the tenant and the tenant's advocate were aware of the reconvened hearing scheduled for September 23, 2013. The tenant acknowledging receiving the notice of adjourned hearing and that document was misplaced by the tenant or her daughter.

I find that the tenant has failed to prove that misplacing the documents were beyond her control.

Further, the tenant's advocated contacted the tenant on the Thursday before the hearing which was scheduled the following Monday to ensure that the tenant had the new access codes that were required for the hearing.

The tenant indicated that she experienced an electrical surge, which cut off the electricity to her residence and had to deal with the electricians on the Monday morning just hours before to the hearing. However, the tenant has not provided any supporting documentary evidence, such as a report from the electrician who attended to the unit to support that the alleged incident occurred.

Further, the tenant was aware on the Thursday prior to the Monday hearing to ensure that they had the new access codes for the hearing as she had received a courtesy call from her advocate. Despite medical evidence supporting that she is forgetful and disorganized the tenant did not take reasonable step by contacting the branch as soon as she was aware that a problem existed. I find the tenant has not provided evidence of any emergency that prohibited her from contacting the branch earlier, such as on the Friday to request that information.

Therefore, I find the tenant has failed to establish the grounds that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control.

I note the tenant has request a correction of the original decision in the affidavit, however, a correction cannot be dealt with through the review consideration process. The tenant is entitled to make an application for correction.

Decision

Based on the above, the application and on a balance of probabilities, I find the tenant's application must be dismissed.

Therefore, I find the decision and orders made on September 23, 2013, stand and remain in full force and effect. The tenant's application for review is dismissed.

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 07, 2013

Residential Tenancy Branch