



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

This is an application by the tenant to review the decision of and Arbitrator dated October 25, 2013 relating to the above-noted rental unit.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

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 for a review citing the first ground for review.

The decision under review was the hearing of the I tenant's application for a monetary award for the return of a security deposit. The hearing was conducted by conference call on October 25, 2013 at 11:00 A.M. The landlord attended the hearing, but the tenant did not attend and the arbitrator dismissed the tenant's application without leave to reapply, based on her failure to attend the hearing..

In her application for review the tenant stated that she was unable to attend the hearing because:

The morning of the hearing I had a migraine headache at 7:00 A.M. when I woke up. I then took medication that has been prescribed to me to help with migraines and had my brother come from Surrey to watch over my children. The migraine did not cease at all until late that afternoon. I have been suffering from migraines and have been trying multiple prevention medication.

The tenant submitted a doctor's letter dated November 14, 2013. The letter was headed: "WORK ABSENCE CERTIFICATE" and it said: "This letter is to certify that

(name of tenant) was assessed in this office and has been suffering with migraine headaches she reports having one 25/10/13. (reproduced as written)

Residential Tenancy Policy guideline No. 24 sets out policy with respect to grounds for review of a decision. With respect to inability to attend a hearing the guideline states:

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 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.

I am not satisfied by the tenant's evidence concerning her inability to attend the hearing. The hearing was scheduled for 11:00. According to the tenant her migraines are not an unusual occurrence. And she said that she made arrangements after she awoke at 7:00 A.M. to have her brother attend to care for her children. She did not explain why she did not also arrange to have someone call into the hearing on her behalf to act as her agent and to request an adjournment if necessary. The tenant did not explain why she waited until November 15, 2013 to apply for a review consideration. Further the doctor's report established nothing more than what the tenant told him about the state of her health on October 25th when she saw him on November 14th, almost three weeks after the day of the hearing.

I dismiss the application for review based on my finding that the tenant has not shown that she was unable to attend the hearing for reasons that could not be anticipated and were beyond her control

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: November 22, 2013

Residential Tenancy Branch