



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## Introduction

This is an application by the landlord for a review of a decision of the director dated October 17, 2013.

The landlord applied for a review on the grounds that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control; she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision or order was obtained by fraud.

## Issues

Has the landlord provided sufficient evidence to support one of the indicated grounds for review?

## Facts and Analysis

### *Original Hearing and Decision*

The original hearing, held by teleconference on October 17, 2013, was pursuant to the tenants' application to cancel a notice to end tenancy. The tenants attended the hearing but the landlord did not. In the decision dated October 17, 2013, the arbitrator found that the landlord had been properly served with notice of the hearing, based on the tenants' evidence that the landlord was served notice of the hearing by registered mail. As the landlord did not attend the hearing to present evidence to support the validity of the notice, the arbitrator set aside the notice to end tenancy, and ordered that the tenancy remains in effect.

A second hearing convened on November 20, 2013, pursuant to the landlord's application for an order of possession. In that hearing, the arbitrator found that the landlord's application was *res judicata*, as the issue of the notice to end tenancy dated September 18, 2013 had already been determined in the October 17, 2013 decision.

### *Landlord's Submissions*

In the application for review, the landlord indicated that the reason she did not attend the hearing on October 17, 2013 was because she only received the tenants' application and notice of the hearing three business days before the hearing and this was insufficient time for her to arrange for time off work.

The new and relevant evidence that the landlord would have submitted was the evidence that the landlord submitted in support of her application for an order of possession pursuant to the notice to end tenancy.

The landlord's claim of fraud was that the tenants provided the Residential Tenancy Branch with the wrong address for service to the landlord, and they sent the hearing package to the wrong address (the same address as the rental unit in Whistler). The landlord indicated that the tenants knew that the landlord had moved to Vancouver. The landlord only received notice of the hearing at the last minute, and they did not receive a copy of the decision from the October 17, 2013 hearing. The landlord submitted a copy of the tenancy agreement, which shows a different service address in Whistler than that of the rental unit, and a copy of the notice to end tenancy which shows the landlord's service address as the Vancouver address indicated in the application for review. The landlord also submitted a copy of the Xpresspost envelope in which the landlord received the tenants' application and notice of the hearing.

### *Analysis on Review*

I find that the landlord's review application is unsuccessful on the first two grounds. The landlord was aware of the hearing three business days before the hearing, and therefore she should have attended the hearing or appointed someone to act as her agent for the hearing to request an adjournment. The landlord's evidence cannot be considered new, as this evidence was submitted on the landlord's application on October 8, 2013 and was therefore available at the time of the first hearing.

I find that the landlord is successful regarding the allegation of fraud. The decision dated October 17, 2013 only indicates that the landlord was served by registered mail. There is no reference in that decision to the tenants first serving the package to the rental unit address and then re-sending it to the Vancouver address. Further, the tenants did not inform the arbitrator that the landlord's service address had changed. If the arbitrator was aware that the tenants sent the first package to an address other than the landlords' service address and they then re-sent the package by Xpresspost, which is not an accepted method of service under the Act, the arbitrator may have found that the landlord was not served or deemed served with notice of the hearing. This would have

changed the outcome of the hearing on the tenants' application. I therefore find that a review hearing is warranted.

I find that as the landlord's application was found *res judicata* on the basis of the decision on the tenants' application, it is appropriate for me to order the two applications joined and dealt with in the same hearing.

### Decision

I order that the decisions dated October 17, 2013 and November 20, 2013 be suspended until a review hearing has been completed.

A review hearing is a new hearing of the original applications. Notices of the time and date of the hearing are included with this review consideration decision for the landlord to serve to the tenants within 3 days of receipt of this decision. The landlord must also serve a copy of this decision to the tenants.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an information officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020  
Victoria: 250-387-1602  
Elsewhere in BC: 1-800-665-8779

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the arbitrator and the evidence of the party in attendance at the review hearing.

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: December 2, 2013

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