



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD OPB

Introduction

This is an application filed by the tenant for review of a decision of an Arbitrator, dated November 18, 2013. Pursuant to the decision an order of possession and a monetary order were issued in favour of the landlord.

Division 2, Section 79(2) of the *Residential Tenancy Act* provides that 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.

Issues

The application for review is filed on the basis of ground # 1.

Facts and Analysis

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

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

- beyond the control of the tenant, and
- could not be anticipated

The hearing in this matter was scheduled to commence at 9:00 a.m. on November 18, 2013. In his application the tenant claims that a translator was to meet with him and an advocate at the advocacy office for the purposes of participation in the hearing. The

tenant claims, however, that the translator did not arrive until 10:00 a.m. The tenant further claims that he did not communicate with the advocate until such time as the translator had arrived. The tenant has not included any documentary evidence in support of his claims from either the advocate or the translator.

As to what evidence he would have provided in the event of his attendance at the hearing, the tenant claims as follows:

I would have told the [Arbitrator] that I did not receive a Notice to End Tenancy. The manager told me that me and my roommate have to leave because of complaints about noise. The landlord told me if I don't leave he would throw me out the windows. When I told my roommate, my roommate left so I could not pay the rent. I would also have told the [Arbitrator] that I need time to move as it is hard to find accommodation in the middle of winter, and that I have applied for disability so hope to have more money to pay in future.

I note in the decision that the landlord sought an order of possession on the basis of the tenant's provision of a written notice dated September 20, 2013 to end tenancy effective October 31, 2013. In other words, the landlord did not apply for an order of possession on the basis of having issued a Notice to End Tenancy. Indeed, there is no evidence that the landlord issued a Notice to End Tenancy.

Section 55 of the Act addresses **Order of possession for the landlord**, in part as follows:

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

Finally, section 81 of the Act speaks to **Decision on application for review**, in part:

81(1) At any time after an application for review of a decision or order of the director is made, the director may dismiss or refuse to consider the application for one or more of the following reasons:

(b) the application

(i) does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely,

- (ii) does not disclose sufficient evidence of a ground for the review,
- (iii) discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied, or...

Decision

For all of the reasons set out above, the application for review is hereby dismissed. The original decision and orders dated November 18, 2013 are 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: December 05, 2013