



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ET FF

Introduction

This is an application filed by the tenant for review of a decision of an Arbitrator dated November 8, 2013. Pursuant to the decision the landlord succeeded in obtaining an early end of tenancy and an order of possession. As well, the Arbitrator found that the landlord had established entitlement to recovery of the \$50.00 filing fee, and a monetary order was issued in favour of the landlord to that effect.

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

In the decision the Arbitrator noted the landlord's testimony that "the Tenant was served with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on November 1, 2013 with a witness."

In the tenant's application for review consideration he claims that "the hearing that was posted was in [another person's name] and posted on the wrong door. I have never gotten a hearing date in my name ever."

I find the landlord's claim that he posted the hearing package and related documentary evidence pertinent to this particular tenant on this tenant's door is a rebuttable claim. Accordingly, I therefore grant the tenant's application for leave for review. I hereby order that the decision and order dated November 8, 2013 be suspended pending the outcome of a review hearing.

The review hearing will be conducted by way of telephone conference call. Under separate cover, the Residential Tenancy Branch will notify the parties of the time and date of the review hearing. The landlord must provide the tenant with copies of all the documentation on which he intends to rely at the hearing. Service must be either in-person or by way of registered mail.

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

Decision

The decision and order dated November 8, 2013 are both hereby suspended until a review hearing has been completed.

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 19, 2013

Residential Tenancy Branch