



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF OLC

Introduction

On October 22, 2013 at 2:30 pm a conference call hearing was held in response to an application for dispute resolution filed by the tenant for an order to cancel a notice to end tenancy for cause and an order for the landlord to comply with the Residential Tenancy Act (referred to as the *Act*).

The Arbitrator noted in the decision for the hearing that the landlord failed to appear for the scheduled conference call after being served the Notice of Hearing documents by the tenant via registered mail in accordance with Section 89 of the *Act*. The Arbitrator continued to hear the tenant's application in the absence of the landlord and determined that there was no jurisdiction in this matter and as a result, dismissed the tenant's claim.

Division 2, Section 79(2) under the *Act* states 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.

As a result, the landlord has applied for a review of the decision dated October 22, 2013 on the basis of the first ground above.

Issues

- 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 landlord writes that she did not attend the hearing because she was under the impression that the tenant had cancelled the hearing via an addendum completed on October 7, 2013. The landlord supplied a document completed and signed by the tenant and landlord on October 7, 2013 detailing an addendum regarding changes to the conditions of the tenancy. The supporting document did not include anything regarding the cancelling of the hearing that took place on October 22, 2013 and the landlord has not provided sufficient evidence to support the claim on the review application that an agreement had been reached by the landlord and tenant to cancel the hearing. The tenant states that in response to the Tenant's Application for Dispute Resolution, she had made a Landlord's Application for Dispute Resolution which she subsequently cancelled in good faith after having a discussion with the tenant and agreeing that the tenant would cancel his application. However, the tenant did not cancel the application and the conference call proceeded in the absence of the landlord and in the presence of the tenant.

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. Policy Guideline 24 to the *Act* explains that in order to satisfy this ground, the review 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.

When a Respondent is served with a Notice of Hearing they are obligated to appear for the hearing unless otherwise confirmed by the Residential Tenancy Branch that the hearing has been cancelled by the Applicant. If the landlord was under the impression that the tenant had cancelled the hearing, I find that it was prudent and responsible for the landlord to have checked with the Residential Tenancy Branch to confirm the cancellation before making a decision to not appear for the hearing, which the landlord failed to do in this case.

In the absence of sufficient evidence to support the claim that the hearing had been cancelled, I find that application on this ground must fail.

The landlord goes on to argue the case with supporting documentation in the form of written submissions. However an Application for Review is not designed for a party to re-argue their case if they have failed to appear for the hearing.

Decision

For the reasons set out above, I dismiss the Application for Review of the landlord.

The decision and made on October 22, 2013, stands and remains in full force and effect.

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 18, 2013

Residential Tenancy Branch