



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNR O

### Introduction

The tenant applies for review of a Decision dated November 27, 201 in response to cross applications dispute resolution. The landlord attended, but the applicant in this review - the tenant - did not.

Division 2, Section 79(2) under the *Residential Tenancy Act* (the Act) says 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.

The applicant relies on the first ground for review. The applicant submitted a 1 page document from a medical clinic in support of their application dated December 03, 2013.

The applicant applied for review later than prescribed by the Act, and made a request for extension of time to file this application. I find it conceivable the timelines are interpretable to mean the tenant applied on time. On this basis I accept the tenant's application and effectively finding the tenant filed this application on time.

### Issues

Does the applicant advance sufficient evidence in support of their stated first ground for review?

### Facts and Analysis

The tenant states in their application that (they) were unable to attend the original hearing because of, *"Medical condition that was beyond my control. I will be submitting a Doctor's letter."* The applicant provided a letter from their medical clinic stating *that recent stress was a contributing factor in the tenant missing the original hearing.*

In answer to the Review application's question of what testimony or additional evidence the tenant would have provided if the tenant had attended the hearing, the tenant states

that their rent for the month of November 2013 was sent to the landlord by their third party payer, and it was returned.

It must be noted that in order to be successful in their application on the first ground, the applicant for Review must establish that they were:

- unable to attend the hearing, and,
- that the circumstances for being unable to attend the hearing could not be anticipated, and,
- that such circumstances were beyond the party's control.

It must further be noted that the hearing Decision states the Arbitrator found the Landlord was entitled to an Order of Possession, pursuant to section 55(2)(d) of the *Act* on the basis the Landlord and the Tenant mutually agreed in writing that this tenancy would end on October 31, 2013, and the Arbitrator effectively upheld the mutual agreement of the parties as valid.

I find that even if I were to accept the tenant's evidence that they did not attend the original hearing because of circumstances that could not be anticipated and were beyond the tenant's control, I find that the tenant has not provided evidence relevant or sufficient to address the Arbitrator's decision for ending the tenancy.

**Section 81** of the Act, in part, states as follows:

**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:

- (a) the issue raised by the application can be dealt with by a correction, clarification or otherwise under section 78 *[correction or clarification of decisions or orders]*;
- (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
  - (iv) is frivolous or an abuse of process;

(c) the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

(2) A decision under subsection (1) may be based solely on the written submissions of the applicant.

I find the tenant's application does not disclose a basis on which the Decision or Order should be set aside or varied, even if I were to accept the submissions in the application for Review.

As a result of the foregoing **I dismiss** the application for Review as per Section 81(1)(b)(iii), and **I confirm** the original Decision and Order dated November 27, 2013, with the effect that **the Decision and Order made on November 27, 2013 stand.**

*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 09, 2013

---

Residential Tenancy Branch