



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

The tenant has applied for a review consideration of a decision and order dated December 11, 2013.

Division 2, Section 79(2) under the *Residential Tenancy 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 tenant has applied on ground 1 for the review consideration.

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 tenant writes in their application that she was unable to attend the hearing because,

"Both me and my children were very sick on the Dec 11/13 just as they are today December 16, 2013..." "just fled an abusive relationship and has put there dad in jail because of it, cannot afford to just pack up and move...."

[Reproduced as written.]

In order to meet this test, the 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.

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. This ground is not intended to permit a matter to be reopened if a party, through the exercise of reasonable planning, could have attended.

In this case, the tenant new of the hearing date of December 11, 2013, this hearing was scheduled for 2:30 pm by telephone conference. I find it would have been reasonable for the tenant dial into the telephone conference and request an adjournment, rather than to simply not attend. Further, the tenant has provided no medical evidence to support that she was unable to attend due to sickness.

I find the tenant has failed to establish the grounds that she unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control.

Further, I find the Application of the tenant discloses no basis on which, even if the submissions of the tenant were accepted (which they are not), the decision or order should be set aside or varied.

On October 21, 2013, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent in the amount of \$1,260.00.

The tenant had five days from the service of the notice to pay the rent owed or to dispute the notice by filing an Application for Dispute Resolution. The tenant has failed to provide any evidence that they had either filed an application or paid the rent in full with the five days. Under section 46 of the Act, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice to end tenancy, which was October 31, 2013.

Therefore, I find the Decision and orders made on December 11, 2013, stand and remain in full force and effect. The tenant's Application for Review is dismissed.

Decision

The tenant's Application for Review is dismissed.

The decision made on December 11, 2013 stands.

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 24, 2013