



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MND MNDC MNR O SS

Introduction

This review consideration decision is in response to an Application for Review Consideration filed by the Landlord pursuant to section 79 of the *Residential Tenancy Act (Act)*. Specifically, the Landlord is requesting a review of the decision made by an Arbitrator on October 30, 2013.

On October 30, 2013 The Arbitrator dismissed the Landlord's Application for Dispute Resolution without leave to reapply after determining that the Landlord failed to attend the hearing to present the Landlord's claim and that the Tenant appeared at the hearing.

Section 79 of the *Act* reads:

- (1) A party to a dispute resolution proceeding may apply to the director for a review of the director's decision or order.
- (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:
 - (a) a party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control;
 - (b) a party has new and relevant evidence that was not available at the time of the original hearing;
 - (c) a party has evidence that the director's decision or order was obtained by fraud.

The Landlord is requesting the review of the Arbitrator's decision on the basis that the Landlord was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control and the Landlord has evidence that the Arbitrator's decision was obtained by fraud, pursuant to sections 78(2)(a) and 78(2)(c) of the *Act*.

Issues

Has the Landlord established there are grounds to review the Arbitrator's decision, pursuant to section 79 of the *Act*?

Facts and Analysis

In support of the request for review pursuant to section 79(2)(a) of the *Act*, the Landlord declared that they “tried the phone lines and there was no one there”.

In the absence of evidence to the contrary, I accept the Landlord’s declaration that they attempted to join the teleconference. Given the inherent frailties of technology, I cannot determine whether the Landlord was unable to dial into the teleconference because of human error or because of a problem with the system. I find it reasonable to conclude that the Landlord was unable to attend because of a problem with the technology and that there are, therefore, grounds for review, pursuant to section 78(2)(a) of the *Act*.

As I have determined there are grounds for review pursuant to section 78(2)(a) of the *Act*, I find that I do not need to consider whether there are also grounds for review pursuant to section 78(2)(c) of the *Act*.

In the interests of procedural fairness, I find that a new hearing should be convened, pursuant to section 82(2)(c) of the *Act*.

Decision

Notices of the time and date of the hearing will be mailed to the Landlord by the Residential Tenancy Branch. The Landlord must serve each Respondent with the Notice of Hearing and this Review Consideration Decision within 3 days of receipt of the Notice of Hearing.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at <http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

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 03, 2013

Residential Tenancy Branch