



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: CNC FF O

Introduction

This review consideration decision is in response to an application for review by the Landlord, pursuant to section 79 of the *Residential Tenancy Act*.

The Tenant requested a review of a decision made by, an Arbitrator, on December 10, 2013. In that decision dismissed the Tenant's Application for Dispute Resolution, without leave to reapply, after noting that the Landlord attended the hearing but the Tenant did not.

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. [Emphasis added]

Issues

Has the Tenant established grounds for review, pursuant to section 79(2)(a) of the *Act*?

Facts and Analysis

In the Application for Review Consideration the Tenant declared that he has been suffering from severe lung and abdominal problems; that he has been disabled for the past 15 years; that he is under a doctor's care; that he is awaiting further tests and "call from hospital"; and that he was not "in hospital but very sick".

To establish grounds for review pursuant to section 79(2)(a) of the *Act*, the Application for Review Consideration and the supporting evidence must establish that the circumstances which led to the inability to attend the hearing were beyond the control of the applicant and were not anticipated.

Even if I were to accept the Tenant's declaration that he has been disabled for the past 15 years and that that is suffering from severe lung and abdominal problems, I could not conclude that these medical conditions were unanticipated. In reaching this conclusion I note that the Tenant declared he is under a doctor's care and is awaiting further tests, which causes me to conclude that these medical conditions have been on-going.

I specifically note that the Tenant declared that he was not hospitalized. In the absence of evidence from a medical practitioner that shows the Tenant's medical condition prevented him from dialing into this teleconference, if only for the purpose of requesting an adjournment, I find that the Tenant has failed to establish he was unable to attend this hearing for reasons that were beyond his control and were not anticipated.

Decision

Section 81 of the *Act* reads:

- (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 dismiss the Tenant's application for review, pursuant to section 81(1)(b)(ii) of the *Act*, as he has failed to disclose sufficient evidence of a ground for review.

original decision of December 10, 2013 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: January 19, 2014