



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MNDC

Introduction

The Tenant applied for a review of the Direct Request Decision and Order issued by the Arbitrator after a hearing held on the landlord's application. The landlord granted a monetary order for rent owed and damages. The tenants did not appear at the hearing.

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 tenants are requesting a review on the grounds that they were unable to attend the original hearing due to unanticipated circumstances beyond their control.

Issues

Were the tenants prevented from attending the hearing due to circumstances beyond their control that not be anticipated?

Facts and Analysis

The burden of proof is on the Applicant to prove the criteria for a re-hearing has been met under the Act.

The tenants stated that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control. The Application for Review Consideration contained the following statement by the tenant: (reproduced as written)

"We were never aware of the hearing. Emails between us and the Landlord Contrary to what is listed in the order show mutual agreement to end the tenancy on June 30th. Please see the attached 14 Page evidence Package that we have assembled. " (Reproduced as written)

In reviewing the records I find that the landlord made the original application for Dispute Resolution on October 9, 2013 and a hearing was scheduled for January 2, 2014. None of the 3 co-tenants appeared at the hearing on January 2, 2013 and the hearing was held in their absence.

The landlord had submitted proof of service verifying that hearing packages were sent to each of the three co-tenants by registered mail on October 11, 2013. The landlord provided the tracking numbers issued by Canada Post. Printouts of the Canada Post tracking information indicated that two of the three packages were successfully delivered to the addressees, and a card was left for the third recipient who failed to pick up the mail. The data confirms that one of the co-tenants signed for their registered mail delivery on October 17, 2013 and another signed for their package on October 18, 2013. The signature images are recorded by Canada Post for on-line viewing.

Given the evidence before me, I do not accept the tenant's submissions in the Application for Review consideration that they never received the Landlord's application and Notice of Hearing package.

I find that the hearing packages that were served on the applicant tenants contained specific detailed instructions with respect to the proceedings and the manner in which the parties must sign in to the conference call for the hearing.

The *"NOTICE OF A DISPUTE RESOLUTION HEARING"* page issued by Residential Tenancy Branch on October 9, 2013 and served on the tenants by registered mail, included the date and time of the hearing, the toll-free phone number for the participants to call and an access code. The Notice contains a large section in the center of the page titled, *"INSTRUCTIONS"* that states:

1. At the scheduled time, call one of the numbers available: Vancouver (604) 899-1159 OR, for all other areas, 1(888)458-1598."

Given the above, I find that the tenants, were properly served with the Notice of Hearing in accordance with the Act, but never attended the proceedings. The fact that some of the respondents may have been out of the country on the specific date of the hearing is not sufficient to satisfy the criteria to prove that they were unable to attend the original hearing due *circumstances that could not be anticipated* and were *beyond their control*. I base this determination on the following facts:

- The parties were served on October 17 and 18, 2013, with the hearing packages giving the call-in information, and the tenants' signatures documented on the Canada Post tracking website confirm that these were received,
- the parties would be aware in advance that they would be out of the country on the date scheduled for the hearing,
- none of the respondents requested an adjournment, despite ample time to do so between October 18, 2013 and January 2, 2014, and
- the parties failed to call in from the out-of-country location on the date, and at the time, that was scheduled for the hearing.

Based on the evidence before me and the information provided by the tenants in this application for Review Consideration, I find that, the tenants failed to meet the required threshold to establish the criteria that would support the stated ground that justifying a Review Hearing.

Decision

The tenant's Request for Review Consideration is hereby dismissed and both the Decision and Order issued on January 2, 2014, still 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: January 20, 2014

Residential Tenancy Branch