



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT  
and [tenant name suppressed to protect privacy]

## **REVIEW CONSIDERATION DECISION**

Dispute Codes: MNDC

This is an application by the tenant to review the decision and order of an Arbitrator dated December 11, 2013 relating to the above-noted rental unit.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

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 for a review citing the first ground for review.

The decision under review was the hearing of the tenant's application for a monetary award and the landlord's application for an order for possession and a monetary order. The hearing was conducted by conference call. It was first heard on October 17, 2013 and was adjourned at the request of the tenant's agent and rescheduled to be heard on December 11, 2013. The tenant did not attend the hearing on December 11<sup>th</sup> and the arbitrator dismissed her claim without leave to reapply. The arbitrator granted the landlord a monetary award for unpaid rent and order that the landlord retain the tenant's security deposit in partial satisfaction of the monetary award.

In her application for review the tenant stated that she was unable to attend the hearing because she was sick and missed the time because she was in bed till 10 P.M. In a written submission she said that:

On Dec, 11, 2013, I've been ready to do hearing Resolution... But, since I am under medication & have lots of emotional & physical problem I missed

understood the time of hearing.. (I was going to do it at 1:30 same time as first hearing. It is my missing opportunity to justify myself! (reproduced as written)

The tenant submitted a copy of a letter from her family doctor dated January 6, 2013. In the letter the doctor said:

As (name of tenant)'s family physician, I am writing to confirm that she has been suffered from severe anxiety and depression for which she has been on medication and was seen by a psychiatrist. Her concentration has been enormously affected by these conditions. Moreover, she has had problems with her eyes, as a result she lost her vision on the left side significantly.

Residential Tenancy Policy guideline No. 24 sets out policy with respect to grounds for review of a decision. With respect to inability to attend a hearing the guideline states:

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.

I am not satisfied with the tenant's evidence concerning her inability to attend the hearing. The hearing was convened once and adjourned at the request of the tenant. The tenant received notice of the new hearing and by her own admission did not call in at the appointed time because she neglected to read the hearing letter and called in at the time scheduled for her previous hearing. The tenant's medical problems amount to an excuse for her not attendance, but according to the tenant's evidence they were not the operative cause and they were not sudden and unexpected and as such they do not constitute matters that could not be anticipated by the tenant.

I dismiss the application for review based on my finding that the tenant has not shown that she was unable to attend the hearing for reasons that could not be anticipated and were beyond her control.

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 24, 2014

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Residential Tenancy Branch