



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

The Tenant has applied for a Review Consideration of the decision made on his Application, in a hearing conducted on December 9, 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 applies under the first ground above.

Issues

Was the Tenant unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control?

Facts and Analysis

The Tenant filed an Application for Dispute Resolution on September 30, 2013.

On September 30, 2013, the hearing was scheduled for the Tenant's Application, to be heard on December 9, 2013, and the Tenant was provided with copies of the Notice of Hearing for himself and copies to serve on the Landlords.

The Tenant did not appear at the hearing of his Application. The Respondent Landlords called into the hearing, which was conducted by telephone conference call, and as the Tenant was not present and the Landlords were ready to proceed, the Tenant's Application was dismissed without leave to reapply.

In this Application for Review Consideration the Tenant writes that he was unable to attend the hearing for his Application because he was, "... in the courtroom @ a payment hearing from 9:30 to noon."

In evidence the Tenant has supplied a copy of an Application Record/Order form issued by the Provincial Court of British Columbia (Small Claims Court). The Record/Order indicates the Tenant was a defendant and was appearing in court on December 9, 2013. The Tenant has provided a carbon copy of this form. There is original writing in ink, on the carbon copy of the form: "9:30 am -> 12:20 pm", although it is unknown who wrote this.

There are no particulars from the Tenant as to when he was served with a notice to appear at the Provincial Court matter, or when his matter was actually heard in the Provincial Court.

Decision

Based on the above, the evidence and the Application for Review Consideration of the Tenant I find the Tenant's Application must be dismissed.

I find the Tenant failed to prove that he was unable to attend the hearing due to circumstances beyond his control or that were not anticipated.

As set out in policy guideline 24 to the Act,

"A dispute resolution hearing is a formal, legal process and parties should take reasonable steps to ensure 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 situation, the Tenant made an Application for Dispute Resolution and had notice for over two months of when his hearing would occur (from September 30 to December 9, 2013). There is no evidence from the Tenant of when he learned of the Provincial Court date.

I find there is insufficient evidence from the Tenant that he exercised reasonable planning once he knew the two legal matters would conflict, such as requesting an adjournment for either one of the hearings.

The Tenant might have written to, or attended the Residential Tenancy Branch, requesting an adjournment, or he may have called into the hearing and requested an adjournment, or, he might have had an agent appear for him at the hearing to request an adjournment.

Therefore, I find the Tenant has failed to establish he missed the hearing because it was beyond his control or that the conflicting court dates were not anticipated.

For these reasons I find the Tenant's Application for Review Consideration must be dismissed.

The decision made on December 9, 2013, stands and remains in full force and effect.

This decision is final and binding on the parties and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 07, 2014

Residential Tenancy Branch