



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC CNR

Introduction

This Application for Review Consideration was filed by the tenants on January 15, 2014, seeking a Review Consideration of the Decision dated January 13, 2014 and having received that decision by hand on January 13, 2014. The Decision and Orders granted the landlords an order of possession, a monetary order in the sum of \$1603.64, and authorization for the landlords to retain the \$500.00 security deposit in reduction of the total amount awarded of \$2,053.64.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 have applied on the first ground.

Issue

- Have the tenants provided sufficient evidence that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

Facts and Analysis

I find the tenants applied within the timelines as defined under section 80 of the *Act*. The Application contains information under section C1 on why the tenants could not attend the original hearing held on January 13, 2014.

The tenants write in their Application:

“We [name of tenants] were driving home to call for the hearing and the car started smoking and then I pulled over and it would not start again. I tried very hard to get the car to start, but could not. We had no choice to stay on the side of the road and call for help due to are circumstances we were unable to call a tow truck and left the car on the side of the road, and got [other named person, Mr. W] to pick us up. At this point we had missed are deadline to call in. Please reconsider letting us have a new hearing as I believe when you hear are side of the story the disson may be different. I got a written letter from [other named person, CW] to confirm my statement above.”

[Reproduced as written]

The tenants provided a letter dated January 14, 2014 from CW indicating that he was called by the tenants at 12:30 pm to pick them up due to the fact that the tenants’ car broke down and that he picked them up due to the car problems.

Decision

Based on the above, the evidence and Application submitted, and on a balance of probabilities, I find the following.

In order to be successful on the first ground for Review, the tenants must prove, based on a balance of probabilities, that the circumstances that prevented them from attending the hearing (which was held by telephone conference call), were both unanticipated and beyond their control.

Policy Guideline 24, which deals with Review Considerations, sets out the following about this ground of Review:

“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 applicants, 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.”

[Reproduced as written]

The tenants have applied for a Review Consideration by stating that they could not call into the hearing due to car problems; however, indicate in their Application that they were able to call for help, and that help arrived based on that phone call. I find the tenants provided unclear information by stating they could call for help and then later indicated they were “unable to call a tow truck”, and then indicated they were able to get Mr. W to pick them up. Based on the above, I find the tenants have provided contradictory evidence as the tenants have confirmed that they called for help with their car; and provided insufficient evidence as to why they could not call into the teleconference hearing telephone number, which can be accessed by any phone, cellular or otherwise, and call for help with their car after the teleconference hearing.

Given the above, **I dismiss** the tenants’ application claiming that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control due to insufficient evidence and contradictory evidence.

The Decision and Orders made on January 13, 2014, **stand and remain in full force and effect.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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

Residential Tenancy Branch