



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 21, 2014 a hearing was conducted to resolve a dispute between these parties. The landlord had applied for an Order of Possession for an Early End to Tenancy. The tenant did not attend the hearing. The landlord appeared at the hearing and stated that the tenant had moved out of the unit and returned the keys and the Arbitrator therefore determined that the matter was concluded. The tenant has applied for a review of this Decision.

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.

Issues

The applicant relies on sections 79(2)(a) and (b) of the *Residential Tenancy Act* (the "Act"); that the party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. The party has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

In this application for review, the tenant states that the reason for not attending the hearing is because the applicant phoned into the hearing and entered the file number instead of the access code. The applicant was given a message saying the code was incorrect and then entered the correct code. The applicant waited but no music played so the applicant connected to the operator and nothing happened. The applicant hung up the phone after four minutes and 55 seconds. The applicant immediately called back at 1.37 p.m. and was connected to the conference and was told he was the only participant. The applicant waited for 10 to 15 minutes and then tried the operator again and was told that currently he was the only person connected to the call. The applicant called the Residential Tenancy Branch for more information and was on hold for 65 minutes.

The applicant submits that since possession of the unit had already been granted the applicant's discussion was to ensure that the prior arrangements discussed between the building manager CD and the applicant would be met. The applicant submits that he did not agree with the accusations put forth by the CD but rather released the apartment in an effort to conclude this matter in a mutual agreement. The applicant submits that by going ahead with the hearing the landlord void the offer they put forth.

With regard to this section of the application for review consideration; even if the applicant had connected to the hearing at the scheduled time of 1.30 p.m.; as the applicant had already moved from the rental unit and the landlord had only applied for an Early End to Tenancy, no hearing took place as the matter was deemed to have been concluded. Therefore, I find a review of the decision under this ground must be denied.

New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Arbitrator
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when the applicant has evidence which meets all five criteria will a review be granted on this ground.

On this ground for review, that the applicant has new and relevant evidence that was not available at the time of the original hearing, the applicant has attached a copy of the original decision, written statements from the applicant, email references from roommates, a copy of the tenancy agreement, a time line of events, copies of text messages, a copy of an unsigned mutual agreement to end tenancy and other documentation.

I have considered the documentary evidence before me and find that this evidence should have been available at the time of the original hearing; the evidence is not new and is not relevant to the matter that was before the Arbitrator for the Early End to Tenancy. This evidence would not have had a material effect on the decision of the

Arbitrator as the tenant had already vacated the rental unit. If the applicant has issues about any agreement made with the building manager or landlord the applicant is at liberty to file an application relating to those matters. This is not the forum for any issues the applicant has with the landlord to be dealt with as the original application made by the landlord was solely for an Order of Possession based on an Early End to Tenancy. As the tenant choice to vacate the rental unit before the hearing took place then the matter was deemed to have been concluded at the original hearing. I find that the application for review on this ground must fail.

Decision

The tenant's application for review consideration is dismissed.

The decision made on October 21, 2014 stands.

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: October 27, 2014

Residential Tenancy Branch