



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

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:

- a. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
- b. A party has new and relevant evidence that was not available at the time of the original hearing.
- c. A party has evidence that the director's decision or order was obtained by fraud.

The Tenants now applies for review on the grounds of 79(2)(a) stating that they were not available at the time of the original hearing because of circumstances that could not be anticipated and were beyond his control.

Issues

Have the Tenants met the standard of proof that they were unable to attend the hearing due to circumstances that could not be anticipated and were beyond his control?

Facts and Analysis

The Decision and Order under review is a decision issued by Arbitrator Howell on October 31, 2014, which dismissed the Tenants' application and granted the Landlords an Order of Possession for cause.

The hearing was scheduled September 10, 2014, to be heard on October 31, 2014 at 10:30 a.m. to hear matters pertaining to the Tenants' Application for Dispute Resolution. As outlined in Residential Tenancy Branch Guideline #RTB-114, hearings will proceed at the scheduled time unless the Arbitrator decides otherwise. There is nothing in the decision of October 31, 2014, that would cause me to conclude that the Arbitrator altered the start time of the hearing.

Residential Tenancy Branch Policy Guidelines suggest that a person requesting a review pursuant to section 79(2)(a) of the *Act* must provide "supporting evidence" to establish that the circumstances which led to the inability to attend the hearing were beyond the control of the applicant and could not have been anticipated. I concur with this guideline.

The Tenants stated on their Application for Review Consideration that they were unable to attend because their telephone was unplugged at the scheduled time of the hearing. They noted that the telephone line was provided in the rental unit as part of their tenancy. In support of the Tenants' Application for Review Consideration the Tenants provided two written letter from people who alleged to have attempted to call the Tenants at the precise time the hearing was scheduled.

Notwithstanding the Tenants' submission that their phone was unplugged, there is no evidence before me that would indicate the Tenants did their due diligence in preparing for the hearing by making sure, in advance of the start time, that their telephone was operational, or that they took action to review why their telephone may not be working by checking to see if it was plugged in. The burden lies with the applicant to be prepared to attend the hearing at the scheduled time and therefore I find this matter was within the Tenants' control to ensure they had a working telephone to call into the teleconference and could have been anticipated.

Based on the above, I find that the Tenants submitted insufficient evidence to establish that they were unable to attend the hearing due to circumstances that could not be anticipated or were beyond their control. Accordingly, I find that the Tenants failed to establish grounds for a review pursuant to section 79(2)(a) of the *Act*.

Decision

Overall I find that pursuant to Section 81(b) the application does not disclose sufficient evidence of a ground for the review.

The Decision and Orders made on October 31, 2014, stand.

This decision is legally binding 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: November 20, 2014

Residential Tenancy Branch