



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On October 23, 2014 a hearing was conducted to resolve a dispute between these parties. The Landlord had applied for an Order of Possession for the rental unit due to unpaid rent, a Monetary Order for money owed or compensation for damage or loss and unpaid rent, and for authority to retain the tenant's security deposit. Neither party attended the hearing; the landlord was granted leave to reapply. The landlord 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) 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.

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.

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.

For example, a review may not be granted if a participant's phone batteries were drained. One may be granted if there was a system-wide failure.

The applicant has submitted that they were unable to attend the hearing as the only phone the applicant has is a cell and the applicant does not have a landline. The applicant submitted that they plugged their cell in like they do every evening and in the morning it was not charged. The applicant realized the phone was dead so used their phone charger and called into the hearing but was too late.

I am not satisfied that the applicant through due diligence or more careful planning could not have attended the hearing. As stated above this is a legal and formal process and a review will not be granted if the participants phone batteries were drained as through the exercise of reasonable planning this could have been avoided. The application for a review based on this ground is therefore dismissed. The applicant is still entitled to file a new application as leave was granted to reapply at the original hearing.

Decision

The tenant's application for review consideration is dismissed.

The decision made on October 24, 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: November 06, 2014

Residential Tenancy Branch