



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

The Tenant applies for review of the decision on the basis that the Tenant was unable to attend the Hearing.

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

Is the Tenant entitled to a review Hearing?

Facts and Analysis

The Tenant submits that she was unable to attend the hearing due to her attendance at a Provincial Court dealing with a custody matter. The Tenant submits that she communicated with the Residential Tenancy Branch about rescheduling the Hearing date for this reason and was provided information on obtaining an adjournment by consent of the other Party. The Tenant submits that the consent of the Landlord was obtained for an adjournment and that this consent was provided by email to the Residential Tenancy Branch. The Tenant submits however no adjournment occurred or appeared to have been considered. The Tenant submitted a copy of the Provincial Court Trial Notice indicating a trial scheduled for July 25 and 26, 2012. The Hearing was held on July 26, 2012 and the Tenant did not appear. It is noted that the Residential Tenancy Branch did communicate to the Tenant information on obtaining an adjournment by consent.

Section 82 of the Act provides that, unless the director dismisses or refuses to consider an application for a review, the director must review the decision or order and may conduct a review by, inter alia, holding a new hearing. Further, following the review, the director may confirm, vary or set aside the original decision or order.

Given the evidence of the Tenant in relation to both the trial schedule and the Tenant's effort to obtain an adjournment with the Residential Tenancy Branch, I find on a balance of probabilities that the Tenant did forward the Landlord's consent to an adjournment to the Residential Tenancy Branch and could not anticipate that the request for an adjournment would not be dealt with. I also find that the consideration of an adjournment request and changing the Provincial Court trial date was beyond the Tenant's control. Accordingly, I find that the Tenant is entitled to a review hearing and I grant the Tenant a review Hearing.

Decision

I hereby order that the decision dated July 26, 2012 be suspended until a Review Hearing has been completed.

The Review Hearing is scheduled for **August 30, 2012 at 11:30 a.m.** and will be conducted by telephone conference call.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing.

Notices of the time and date of the hearing are included with this Review Decision for the Tenant to serve to the Landlord within 3 days of receipt of this Decision.

Although the Tenant has provided evidence with its application for review consideration, the Tenant must serve a copy of that evidence on the Landlord. Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new Hearing.

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: August 08, 2012.

Residential Tenancy Branch