



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

Introduction

The Tenant applied for a review of the Direct Request Decision issued after a hearing held on the tenant's application, which was dismissed after the tenant failed to attend.

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.

The tenant is requesting a review on the grounds that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the tenant's control.

Issues

Was the tenant prevented from attending the hearing due to circumstances that were beyond the tenant's control and that could not be anticipated?

Facts and Analysis

The tenant indicated in the application for Review Consideration that the tenant was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond tenant's control. The Application for Review Consideration contained the following statement by the tenant: (reproduced as written)

"Medical emergency (pregnancy-related) that resulted in being bed-ridden at time of hearing. Called RTB in afternoon after treatment and was informed needed to complete this request for a review and submit my doctor's note as supporting

evidence for the reason I missed the hearing call. I am currently 8 months pregnant. (Reproduced as written)

The tenant included a signed medical note from his physician confirming that the tenant's absence on the day of the hearing stemmed from the tenant being "*confined to bed due to pregnancy-related complications*"

I find that the tenant's evidence and written testimony accompanying the Request for Review Consideration indicates that there were genuine reasons based on medical circumstances that were beyond the tenant's control that prevented the tenant from appearing at the dispute resolution hearing they had requested.

Therefore, I find that the ground put forward by the applicant in this Application for Review Consideration has been successfully established sufficient to warrant a review of the decision rendered on January 31, 2014.

Section 82 of the Act states that, unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order:

- (a) based solely on the record of the original dispute resolution proceeding and the written submissions of the parties, if any,
- (b) by reconvening the original hearing, or
- (c) by holding a new hearing.

Following the review, the director may confirm, vary or set aside the original decision or order.

Pursuant to *Section 82(2) of the Residential Tenancy Act*, I hereby order a rehearing of the original dispute resolution proceeding.

I Order that a new hearing be conducted at which point the merits of the circumstances in the tenancy, including the allegations raised in this Application for Review, can be addressed by both parties.

Notices of hearing are included with this review consideration decision for the Tenant to serve to the Landlord within 3 days of receipt of this decision.

The tenant is ordered to serve the landlord with all of the evidence that they had attached to support the Request for Review Consideration along with the other documents as described above.

Each party **must** serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. Fact sheets are available at

<http://www.rto.gov.bc.ca/content/publications/factSheets.aspx> that explain evidence and service requirements. If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020

Victoria: 250-387-1602

Elsewhere in BC: 1-800-665-8779

Conclusion

The Decision made on January 31, 2014, is hereby suspended, pending the outcome of 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: February 21, 2014

Residential Tenancy Branch