

REVIEW DECISION

The Tenants have applied for a review of the Decision and Orders of a Dispute Resolution Officer dated April 30, 2010. The Decision and Orders granted an order of possession and monetary orders to the Landlord.

The Tenants have also applied for more time to file their Application for a review. The Tenants indicate that they received a copy of the Decision on May 4, 2010, but did not receive a copy of the Order of Possession accompanying the Decision. The Tenants state that they received a letter on May 10, 2010, by regular mail, demanding that they vacate the rental unit by May 13, 2010, but the Order of Possession has still not been served on the Tenants. The Tenants state that they went to the Residential Tenancy Branch on May 4, 2010, to make enquiries and were told they should wait until they were served with the Order of Possession before filing an Application for review. The Tenants made their Application for review on May 10, 2010, which is the same day that they received the letter from the Landlords demanding they vacate the rental unit by May 13, 2010.

The Notice to End Tenancy was issued for unpaid rent. In this case, the time limit for filing an Application for a review is 2 days from the date the Tenants receive the Decision **or** the Order of Possession. Therefore, the Tenants are 4 days late filing their application. However, I accept that there may have been some confusion on the Tenants' part with respect to the time limit for filing their Application. I grant the Tenants' application to be allowed more time to file their Application for review.

The Tenants state two grounds in the Application for Review. The first ground is that they were not served with the Notice of Direct Request proceeding. I dismiss this portion of the Review Application, as the Decision and Orders were granted through the Direct Request process. There is no hearing held in this process, rather it is a proceeding done by written application only, and the Dispute Resolution Officer was satisfied that the Tenants were served in accordance with the Act with the Notice of the

Direct Request proceedings, by mailing the documents to the Tenants by registered mail. *Evidence submission is not required of the tenants.*

The second ground of Review is that the Decision and Order were obtained by fraud. The Notice to End Tenancy states that the Tenants did not pay rent for the month of April, 2010, in the amount of \$1,250.00. The Tenants allege that they paid rent in full for the month of April, 2010, and provided a copy of a bank statement in support of their allegation. The Landlords filed their Application for Direct Request Proceeding on April 20, 2010. The statement indicates that an amount equal to the monthly rent was negotiated on April 22, 2010. There is no evidence provided with respect to whether or not the Landlords reinstated the tenancy, or entered into a new tenancy with the Tenants, on April 22, 2010.

I do not find that this is conclusive evidence of fraud on behalf of the Landlords. There is simply not enough information or facts to clearly establish the Landlord was fraudulent.

However, I do find that the Decision and Orders *may* have been different if the Dispute Resolution Officer had this information been before her while making her determinations.

Therefore, I allow the Application for a Review on this basis.

Having accepted the request for a review under section 79, I will not consider all the evidence with respect to the grounds submitted for review in this Application. Those are issues to be dealt with at the hearing in this matter, as described below.

Having granted the Tenants' request for a review, section 82 of the *Act* provides the following:

Review of director's decision or order

82 (1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(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.

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

I order that a new participatory 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.

Therefore, I order that the Decision and Orders dated April 30, 2010, in this matter **be suspended** until such time that a new hearing is conducted and a decision is reached.

I order that this hearing be held by telephone conference call and it be scheduled for the date and time shown in the attached Notice of Hearing.

Pursuant to section 81(4), the Tenants must serve upon the Landlords a copy of this Review Decision and the attached Notice of Hearing within **three (3) days** of receiving this Review Decision.

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: May 17, 2010