



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

### Introduction

This is an application by the landlords for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on February 17, 2011, with respect to an application for dispute resolution from the tenants.

A DRO may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

### Issues

Division 2, Section 79(2) under the *Residential Tenancy Act* (the *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 landlords applied for review on the basis of the first and second of the grounds outlined above. The landlords also applied for an extension of time for their application.

### Facts- Extension of Time Request

The landlords indicated on their Application for Review Form that they received the February 17, 2011 decision on February 23, 2011 and a copy of the Order from the landlords on March 2, 2011. In Section D of that Form, they indicated that 16 days had elapsed since they "received a copy of the arbitrator's decision or order?"

The landlords responded as follows to the request that they list the reason they were unable to apply for review within the required time frame.

*We were not aware of any hearing because we did not receive the Application for Dispute Resolution hearing package, sent by registered mail. Supposedly, we have no proof/receipt of a hearing pkg notice except registered mail notice that the P.O. said AJ sent package? At this time our communal mail box ½ mile away was damaged & frozen & by the time we retrieved the registered mail notice it had expired and the package had been returned. So we were not properly deemed served. We are new landlords and were not aware that we had to apply to keep the damage deposit. Our ex tenant was properly informed verbally and by letter dated Oct. 25/10. As new landlords we were also not aware that there was a time limit and that we again had to apply for review. We dealt with this issue by sending two letters with attachments dated Feb 23/11 & Mar. 14/11 by registered mail to the Tenancy Branch in Burnaby...*  
(as in original)

The February 23, 2011 and March 14, 2011 letters referred to in the landlords' Application for Review asked the Residential Tenancy Branch (RTB) to take into account additional evidence that they submitted after they received the decision.

#### Analysis – Extension of Time Request

The Act states that an applicant for review has 15 days within which to make an application for Review. The landlords provided no adequate explanation as to why they did not apply for a review of this matter within 15 days of receiving the February 17, 2011 decision, which they said occurred on February 23, 2011. The RTB did not receive their application until 27 days after they received the February 17, 2011 decision.

The Act provides that a DRO may extend or modify a time limit established by the Act only in **exceptional circumstances**. The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a DRO to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward the "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well

- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by a DRO in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

Based on the evidence supplied by the landlords, I find that the landlords failed to make an application for review within the proper time limits and failed to provide an adequate reason for their request for an extension of time to do so. Although they sent letters to the RTB, they did not follow the guidance provided to them with respect to filing an Application for Review and were well outside the 15 day time period allowed.

I find that the landlords have not proven that exceptional circumstances as described above existed such that they were prevented from filing an Application for Review within the proper time limits. I therefore dismiss the landlords' application to extend the time to file an Application for Review.

I also dismiss this application because the landlords failed to provide sufficient information to document their claim that their mailbox was frozen and damaged, thus

preventing them from receiving notice that there was a registered mail package for them at the post office. Although they asserted that a Canada Post Supervisor could attest to the problem with their mailbox, they provided no evidence from that Supervisor or anyone else from Canada Post to confirm their account of what happened. Without such corroboration of their reasons, section 90(a) of the *Act* establishes that registered mail is deemed served five days after it was mailed.

On a substantive note, the landlords' application stated that because they were new landlords they were not aware that they had to apply to the RTB to keep the tenant's security deposit. Lack of knowledge of the provisions of the *Act* does not override the responsibilities of a landlord to comply with the statutory provisions regarding the return of a tenant's security deposit. Under these circumstances, the landlords' attendance at the hearing would not have varied the outcome of the DRO's decision since the landlords admitted that they did not apply to keep the tenant's security deposit.

Overall, the tenants' application does not disclose sufficient evidence of a ground for review and does not disclose any basis upon which, even if the submissions in the application were accepted, the decision of the DRO should be set aside or varied.

I confirm the original decision in this matter.

#### Decision

The decision made on February 17, 2011 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*.