



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes:

Introduction

This is an application by the tenant for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on February 22, 2011, with respect to an application for dispute resolution from the landlord.

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 tenant applied for a review on the basis that the landlord provided fraudulent evidence, the third ground identified above. The tenant also requested an extension of time to apply for her review.

Facts- Extension of Time Request

The *Act* states that an applicant for review has 15 days within which to make an application for Review. The tenant provided the following response to the request that she list the reason she was unable to apply for review within the required time frame.

I did not receive the actual decision in the mail until March 2, 2011 and I am entitled to due process. In addition, I need to obtain consent to take time off work to personally attend the Residential Tenancy Branch to file this.

P.S. On March 18, 2011, I met with an Information Office who instructed me to return another day with proof of unemployment, which I am now doing...

Analysis – Extension of Time Request

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 tenant, I find that the tenant failed to make an application for review within the 15 day time limit established in the *Act*. She indicated in her Application for Review that she first attended the Residential Tenancy Branch (RTB) office to submit her review application on March 18, 2011, 16 days after she received DRO XXXX's March 2, 2011 decision. Although she dated her application as being completed on March 11, 2011, the RTB did not receive her completed application until March 21, 2011.

I do not accept that the tenant could only submit her Application for Review by personally attending the RTB office. I also find her claim that she had to wait until she was allowed to take time off from her work inconsistent with her statement that she delayed completing her application on March 18, 2011 because she needed to submit proof to the RTB that she was unemployed. I find that the tenant has not proven that exceptional circumstances as described above existed such that she was prevented from filing an Application for Review within the proper time limits.

I therefore dismiss the tenant's application to extend the time to file an Application for Review.

Fraud- Facts and Analysis

The tenant maintained that the landlord "perjured herself at the hearing when she gave the fraudulent evidence that she had advertised, but was unable to rent, the subject basement suite." The tenant claimed that the landlord failed to provide any supporting evidence regarding this matter and maintained that she did provide affidavit evidence that the suite was uninhabitable, contrary to the DRO's decision.

A review hearing will likely not be granted where a DRO prefers the evidence of the other side over the evidence of the party applying. It is not enough to allege that someone giving evidence for the other side made false statements at the hearing, which were met by a counter-statement by the party applying, and the whole evidence adjudicated upon by the DRO.

A dispute resolution hearing is a formal adjudicative process. It is up to each party to present their cases for consideration by the DRO. While a DRO may ask specific questions to clarify his or her understanding of the evidence, it is not the responsibility of the DRO to check with the parties regarding each piece of oral and written evidence submitted. The tenant bears responsibility for presenting her evidence and challenging evidence presented by the landlord. The tenant has not explained why she could not have raised her concerns regarding the landlords' testimony regarding her attempts to advertise the rental suite at the hearing.

Much of the tenant's application for review on the basis of fraud is an assertion that the landlord lied to the DRO and that the DRO should not have accepted the landlord's evidence. As noted above, an application for review for fraud will not be granted if the applicant claims that the other party made false statements at the hearing and that her testimony should have been accepted instead.

In addition to my dismissal of this Application for Review because of the lateness of the tenant's application, I also dismiss this application because the tenant failed to demonstrate that she had sufficient evidence of a ground for review. I confirm the original decision in this matter.

Decision

The decision made on February 22, 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*.