



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC

### Introduction

This is an application by the tenant for a review of a decision rendered by XXXX, Dispute Resolution Officer (DRO) on March 16, 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 she was unable to attend the March 15, 2011 hearing because she did not receive notification from the landlord of the scheduled hearing or the hearing documents and details. The tenant also applied under the third ground outlined above, claiming that the DRO's decision was obtained by fraud. The tenant did not request 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 did not apply for a review of this decision until April 11, 2011, 19 days after she stated that she received the DRO's decision on March 22, 2011. She did not complete any portion of the portion of the Application for Review Form requesting an extension of time to apply for this review.

### 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*. Although she maintained that she did know about the March 15, 2011 hearing, she admitted to receiving the March 16, 2011 hearing on March 22, 2011. She provided no explanation for why she needed more time than permitted under the *Act* to submit her Application for Review.

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 because she has failed to apply for a review of this decision within the statutory time limits required under the *Act*.

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.

The tenant did not provide any evidence that would indicate that she gave the landlord the mailing address where she was residing when the landlord sent the dispute resolution hearing package by registered mail. Rather, the tenant stated in her application that she sublet her apartment at the dispute address by that time. According to the terms of the Residential Tenancy Agreement, the tenant was required to obtain the landlord's authorization to sublet her rental unit. The tenant provided no evidence to demonstrate that she obtained this authorization or provided the landlord with a new mailing address. The tenant provided no evidence to demonstrate that she took measures through Canada Post to redirect her mail from the mailing address she had provided to the landlord. In the absence of any alternate mailing address, the landlord sent the registered mail to the tenant at the dispute address. Under these circumstances, the landlord's dispute resolution hearing package was considered served within five days of its mailing.

Much of the tenant's application for review on the basis of fraud is an assertion that the landlord provided incorrect or incomplete information to the DRO and that the DRO should not have accepted the landlord's evidence. 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 the applicant's evidence should be accepted instead.

I confirm the original decision in this matter.

Decision

The decision made on March 16, 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*.