

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR

Introduction

This is an application by the tenant for a review of a decision rendered by a Dispute Resolution Officer (DRO) on September 6, 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 give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- 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* 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 DRO's decision and order were obtained by fraud.

Facts and Analysis - Extension of Time

On her application for review, the tenant noted that she received the DRO's September 6, 2011 by mail on September 12, 2011. The Residential Tenancy Branch (RTB) did not receive her undated application for review until October 3, 2011.

The *Act* states that an applicant for review has 15 days within which to make an application for Review of this type of decision. Although the tenant did not request an extension of time in her application for review, an extension would need to be granted to her in order to consider her application. The tenant provided no explanation as to why she did not apply for a review of this matter within 15 days of receiving the September 6, 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. 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 made no request for an extension of time to file her application for review. I find that the tenant failed to make an application for review within the proper time limits and failed to provide any information regarding why she delayed filing her application. 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 tenants' application because she did not file her application for review with the statutory time limits for doing so.

I also note that the tenants' application for a review on the basis of fraud did 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 or order of the DRO should be set aside or varied.

The tenant stated that the DRO relied on fraudulent statements made by the landlord that were inconsistent with previous statements made in an earlier February 9, 2011 hearing of a previous application regarding this tenancy. The tenant maintained that her statement and information she entered into written evidence for the September 6, 2011 hearing was never read by the DRO. As part of her application for review, the tenant requested that notes from the previous February 9, 2011 hearing by another DRO be taken into consideration as evidence of her allegation that the September 6, 2011 decision was issued on the basis of fraud.

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 review hearing will likely not be granted where a DRO prefers the evidence of the other side over the evidence of the party applying. The tenant appears to have requested that evidence at a previous hearing take precedence over evidence heard and considered at the September 6, 2011 hearing by the DRO. She clearly had an opportunity to raise these concerns at the September 6, 2011 hearing and, in fact, entered written evidence regarding these matters. The tenant's objection would appear to be a disagreement with the DRO's weighing of the evidence before him and his decision in this matter. This is not evidence of fraud, but of a disagreement with the merits of the September 6, 2011 hearing. Even if the tenant were not late in submitting her application for review, I

find that her application for review discloses no basis for establishing that the September 6, 2011 decision was based on fraud.

I confirm the original decision in this matter.

Decision

The decision made on September 6, 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*.