



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

### Introduction

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 Landlord applies for review on the following grounds:

- A party has new and relevant evidence that was not available at the time of the original hearing.
- A party has evidence that the director's decision or order was obtained by fraud.

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

- the issues raised can be dealt with under the provisions of the Legislation that allow an Dispute Resolution Officer to correct a typographical, arithmetical or other similar error in the decision or order; clarify the decision, order or reasons, or deal with an obvious error or inadvertent omission in the decision, order or 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 Dispute Resolution Officer should be set aside or varied;
- the application is frivolous or an abuse of process;

- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Notwithstanding all of the above, section 80 of the Act addresses **Time limit to apply for a review**, and provides in part:

80 A party must make an application for review of a decision or order of the director within whichever of the following periods applies:

(c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).

In the application for review, the Landlord indicates that the decision was received on August 15, 2011. Pursuant to the above legislative provisions, the application for review was required to be submitted within 15 days after August 15, 2011. In fact it was received on October 4, 2011.

The Landlord has requested an extension of time to make the application for review, as follows:

The Review Application was sent in a timely manner, however the application was delayed by your office according to [an employee at the Residential Tenancy Branch], because there was a misunderstanding regarding the personal cheque originally sent with the application and then the money order that was sent the same day; after talking with [the employee]. The money order is now with your office and [the employee] said to resend this application via fax. Also, it should be noted that [the Landlord] is in Germany due to a family medical emergency.

Section 66 of the Act addresses **Director's orders: changing time limits**, and provides in part:

66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) *[starting proceedings]* or 81(4) *[decision on application for review]*.

Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a dispute resolution officer 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 said “reason” must have some persuasive evidence to support the truthfulness of what is said.

I find that the reasons provided for the late filing of the application for review do not meet the test for exceptional circumstances required by section 66 of the Act to extend a time limit. The Landlord did not provide sufficient evidence or complete information to support the accuracy of what he said (for example: when he initially filed his Review Application; the particulars of the misunderstanding; what day he sent his personal cheque and money order; and evidence of when the Landlord left for Germany).

Accordingly, the Landlord’s application for an extension of time to apply for review is hereby dismissed, and the application will not therefore be considered on its merits. The original Decision and Order dated July 26, 2011, is hereby confirmed.

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: October 7, 2011.

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Residential Tenancy Branch