

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD

This is an application by the tenant to review the decision of a Dispute Resolution Officer (DRO) dated April 14, 2011 relating to the above-noted rental unit.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

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 citing the first ground for review. The tenant requested an extension of time to apply for review. According to her application, she received a copy of the decision or order on July 25, 2011. She filed her application for review on October 20, 2011. In the decision and order under review, the landlord was granted a monetary order. Section 80 of the *Residential Tenancy Act* provides that a party must make an application for review of a decision or order within 15 days after the party receives the decision or order if it relates to a monetary order.

The tenant filed the application for review more than two months late. The reason given for the late filing was:

I am not well, and suffer from a medical condition that prevents me from being able to deal with deadlines.

The tenant sent a letter dated September 22, 2011 written by a colleague of the tenant's family doctor. The letter said:

(Name of tenant) is a patient of Dr. Bailey and may miss time deadlines due to underlying medical conditions. Kindly allow grace in this regard.

The Residential Tenancy policy guideline with respect to extending time periods comments as follows:

The *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act* provide that an arbitrator may extend or modify a time limit established by these Acts ***only in exceptional circumstances***. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator 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.

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

The tenant's reason for failing to apply within the applicable time frame does not amount to exceptional circumstances. As noted in the guideline, a "reason" without any force of persuasion is merely an excuse, not an exceptional circumstance. The physician's letter is essentially valueless because it provides no medical justification and amounts to an advocacy letter requesting "grace". I deny the tenants' request for an extension of time to make their review application. The review application is dismissed.

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 25, 2011.

Residential Tenancy Branch