



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** CNR

### **Introduction**

On October 03, 2011, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to cancel the notice to end tenancy for non payment of rent. The Dispute Resolution Officer decided that the landlord was entitled to an order of possession and granted him one. The tenant filed this application for a review of this decision.

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 applicant applied for an extension of time to file the application for review. The applicant also relies on sections 79(2)(a) and (b) of the *Residential Tenancy Act* (the "Act").

Section 79(2)(a) provides that the director may grant leave for review if a party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. Section 79(2)(b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing.

### **Issues**

Does the tenant have exceptional circumstances that prevented her from applying for a review within the two day time frame? Was the tenant unable to attend the hearing because of circumstances that could not be anticipated and were beyond her control? Does the tenant have new and relevant evidence that could change the decision?

**Facts and Analysis**

The Act specifically provides a two day time-frame in which a party can apply for review with respect to an application of this nature. In this case, the applicant applied for a review 19 days after having received the decision. The applicant stated that the reason she was unable to apply for review within the required time frame was as follows: *"I gave the landlord 6 post dated checks starting on November 01, 2011 for rent and what he said I owed him 950 for rent +500 pay back what he said I owed and he excepted them and I thought it was all over with".*

Under section 66(1) of the Act, an extension of time can **only** be granted where the applicant has established that there are **exceptional circumstances** (Sec. 66).

In this matter, the word *exceptional* implies that the reason(s) for failing to apply for a Review in the time required are very strong and compelling. On reflection of the reasons advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented her from filing for Review within the legislated time limit and accordingly dismiss the application. The application has not been considered on its merits.

**Decision**

**The decision made on October 03, 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*.

Dated: November 04, 2011.

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Residential Tenancy Branch