



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

**Dispute Codes:** CNR FF LRE MT RPP

### **Introduction**

On October 31, 2011, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied to set aside a notice to end tenancy and for compensation. The Dispute Resolution Officer set aside the notice to end tenancy and dismissed the balance of the tenant's application. The landlord has applied 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 relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). 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. Section 79(2)(c) provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud. The applicant applied for an extension of time to file the application for review.

### **Issues**

Does the tenant have exceptional circumstances that prevented her from applying for a review within the two day time frame? Does the tenant have new and relevant evidence that was not available at the time of the hearing? Does the tenant have evidence that the Dispute Resolution Officer's decision was obtained by fraud?

### **Facts and Analysis**

This is an application for review filed on November 14, 2011 by the tenant for the review of a decision dated October 31, 2011 and received by the applicant for review on November 06, 2011. The applicant applied for an extension of time to file the application for review. The Act specifically provides a 2 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 approximately 8 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 "*I live in a rural area it is a 2km walk to the P. O. Box and back as I am 82 yrs old I don't walk there everyday*"

Under section 66 of the *Residential Tenancy Act*, an extension of time to apply for review can only be granted where the applicant has established that there are exceptional circumstances. 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 reason advanced by the landlord, I find that the landlord 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.

Therefore, **I dismiss the application for Review and confirm the original decision dated October 31, 2011.**

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 18, 2011.

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Residential Tenancy Branch