



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC

Introduction

This is an application by the tenants for a review of a decision rendered by a Dispute Resolution Officer (DRO) on June 6, 2011 with respect to applications for dispute resolution by both the landlord and the tenants.

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.

In this application, the landlord/applicant (the applicant) requested a review of the June 6, 2011 decision (the original decision) because she had new and relevant evidence that was not available at the time of the hearing and because the decision was obtained by fraud. This application relied on the second and third grounds as cited above. The applicant requested an extension of time to make her application for review.

Facts and Analysis

The applicant noted on her application for review that she received the June 6, 2011 decision in June 2011. Although she did not identify a specific date in June 2011, almost 5 ½ months elapsed between the end of June 2011 and December 12, 2011 when the Residential Tenancy Branch received her application for review. This far exceeds the 15 day time limit established under the *Act* for applying for a review of this type of decision.

In support her request for an extension of time to make her application, the applicant provided the following explanation:

I was not able to review within the required time frame because I was incapacitated from having received surgery, incapacitated from failure to recover from the surgery, incapacitated due to pain and side-effects, bed-ridden, disoriented from pain medication, disabled from surgical amputation, and not in full control of my faculties.

See hospital admission form.

The hospital admission form she attached to her application on a surgeon's letterhead identified her name and a tentative surgery date of Friday, May 6, 2011. Another date of June 20, 2011 is crossed out on that form. As the applicant attended one of the three telephone conference hearings for this dispute on May 18, 2011, I assume that the original surgery date was delayed. However, she provided no details to confirm when she underwent surgery, how long she remained in hospital, or anything else from either the surgeon or the hospital. The remainder of the information attached to the tentative surgery material was a Bowel Surgery pamphlet with her name and address printed in one of the margins.

Although the applicant claims to have experienced severe medical problems arising out of her surgery, I find that she has provided little information to document her claim that she was incapacitated to an extent that she could not submit an application for review within the time frame established under the *Act* or delegate someone to act on her behalf to attend to this matter. A delay of over six months in applying for a review after a decision was issued is significantly beyond the 15-day time frame set out in the *Act*. Although I have the authority to grant an extension of time beyond the 15-day time period for applying for a review, I find that the applicant has provided little, other than

her own statement, to support her version of why she could not attend to this matter in a more timely fashion.

I find that the timing of this application for review coincides with the applicant's receipt in late November 2011 of a Summons to a Payment Hearing before the Small Claims Court of the Provincial Court on December 15, 2011. From this evidence provided by the applicant, it would appear that she submitted her application for review only when it became apparent to her that the tenants were pursuing the monetary Order issued in the tenants' favour against her.

As I find that the applicant has not provided sufficient evidence to demonstrate that she is entitled to an extension of time to apply for a review of the original decision, I dismiss her application for review.

In addition, I have also given consideration to her claim in her application for review that she "was merely an agent performing Landlord-related duties on behalf of XXXXX." She stated that she did not raise these issues at the hearing "due to unforeseen implications." She did not ask for a substantive change in the original decision but asked for "a CORRECTION TO THE NAME OF THE LANDLORD shown in the DRO's Order" to XXXXX instead of her own name. She asserted that "ACCORDING TO SMALL CLAIMS COURT, THIS TECHNICAL ISSUE (of falsely naming me as Landlord) HAS TO BE CORRECTED BY THE RESIDENTIAL TENANCY BRANCH."

In considering the merits of her request for review, I find that the applicant would clearly fall within the definition of a landlord as defined in section 1 of the *Act*. In addition, I note that the applicant's own signed application for dispute resolution (Residential Tenancy Branch File No. #####) identified her as the landlord in that application. The tenants' application submitted significantly later than the landlord's original application similarly identified the applicant for review as the landlord.

I also note that the original decision referred to an original hearing on December 20, 2011 and two subsequent reconvened hearings on April 18, 2011 and May 18, 2011. In total, the DRO mentioned in her decision that the three hearings lasted a total of 3 hours and 15 minutes in total. I find that the applicant had ample opportunity through these three hearings to raise any concerns she may have had with the DRO regarding whether she should be named as the landlord in the tenants' application. There is no reference in the original decision to the applicant raising any such objection. As noted above, this only became an issue for the applicant when the reality of becoming responsible for the DRO's monetary Order became apparent to her.

For the above reasons, I find that even if I were to have granted an extension of time to the applicant, her application has not identified sufficient evidence to enable me to order a review of this decision on the basis of new and relevant evidence or fraud. I also find that the landlord's application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied.

The original decision is therefore confirmed.

Decision

The decision made on June 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*.

Dated: December 23, 2011

Residential Tenancy Branch