



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: OPC

### Introduction

On December 7, 2011 Dispute Resolution Officer (DRO) XXXXX provided a decision on the cross Applications for Dispute Resolution. The landlord had applied for an order of possession and the tenant had applied to cancel a notice to end tenancy; for a monetary order; for return of personal property; to suspend or set conditions on the landlord's right to enter the rental unit; and to allow the tenant to change locks on the rental unit. The hearing had been conducted on December 7, 2011.

DRO XXXX dismissed the tenant's Application and granted the landlord an order of possession.

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 her Application for Review Consideration the tenant seeks more time to make her Application for Review Consideration. The tenant states that due to court dates scheduled prior to "these events"; that she has documentation from her employer; a letter from her trauma counsellor; landlord is avoiding all service attempts; that she exhausted every option and effort to meet the deadline including calling the Residential Tenancy Branch (RTB) on December 6, 2011.

The tenant submits in her Application for Review Consideration that she has new and relevant evidence and that the landlord obtained the decision and order by fraud.

### Issues

It must be decided if the tenant has provided sufficient justification for an extension of time to submit her Application for Review Consideration.

The issues to be decided are whether the tenant is entitled to have the decision of December 7, 2011 set aside and a new hearing granted because she has provided sufficient evidence that she has new and relevant evidence or the original decision was obtained by fraud.

### Facts and Analysis

The tenant identifies on her Application for Review Consideration that she received a copy of the order granted to the landlord on Friday, December 9, 2011. The tenant submitted her Application for Review Consideration on Monday, December 12, 2011.

As the deadline for submission for an Application for Review Consideration for matters relating to an order of possession is two days the tenant would have had to submit her Application no later than December 11, 2011. However as December 11, 2011 was a Sunday and the RTB offices were closed the deadline is extended to the next business.

For these reasons, I find the tenant has submitted her Application for Review Consideration within the allowable timeframe and an extension is not required.

In her Application for Review Consideration the tenant submits that she has new evidence in the form of receipts; tenant/landlord communication; and pictures and video. The tenant goes on to say that as a result of a traumatic family matter she has been obligated to family court dates and medical appointments and conflicting work schedule.

However, the tenant does not indicate why this evidence was not available at the hearing she attended on December 7, 2011. In fact, in the decision DRO XXXXXX writes: "The tenant gave the following testimony; received the Notice at 9:30 p.m. on October 30, 2011, has a file box of evidence to prove her case, has been extremely busy dealing with a matter involving her children in the Supreme Court, was seeking an adjournment of today's hearing...."

While the tenant has submitted copies of receipts; tenant/landlord communication; and pictures and video with her Application for Review Consideration, I find this evidence submitted, most of which is dated prior to the November 28, 2011 did in fact exist and was available to the tenant not only on the day of the hearing but at least 7 days prior to the hearing.

The tenant did submit one typewritten note from her doctor dated December 8, 2011 that stated the tenant told the doctor that she was not able to attend work from September 28 to October 3, 2011 and from November 24 – 30, 2011. The tenant does not provide details as to how this is relevant to her Application.

As such, I find the tenant has failed to establish that she has new and relevant evidence that was not available at the time of the original hearing.

In relation to the tenant's claim that the landlord obtained the order based on fraud the tenant provides no evidence of fraud but rather submits arguments that could have and, in fact, were submitted in the hearing. For example, the tenant submits that: "All receipts of payment and arrangements agreed upon by landlord and tenant."

In the decision DRO XXXXX writes: "...agreed that she was late in paying the rent on several occasions but that it was due to an agreement between her and the landlord that would allow her to pay late." The tenant has provided no such agreement to support this claim.

While the tenant has submitted receipts that confirm that rent was paid late at least 5 months out of the 7 ½ months of the tenancy, she has provided no evidence that there was any agreement related to the late payment. The tenant has also included correspondence from the landlord clearly outlining the landlord's expectation that rent be paid on the day that it is due each month but no correspondence confirming any agreements for late payment.

I therefore, find the tenant has failed to provide any evidence whatsoever that the landlord obtained the order based on fraud.

### Decision

For the reasons noted above, I dismiss the tenant's Application for Review Consideration in its entirety. The decision made on December 7, 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 15, 2011.

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Residential Tenancy Branch