



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNR MNSD O

Introduction

This is an application by the landlord for a review of a decision and order rendered by a Dispute Resolution Officer (DRO) on December 22, 2011, with respect to applications for dispute resolution by both the landlord and the tenant.

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* (the *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 case, the applicant requested a review because she claimed to have new and relevant evidence that was not available at the December 22, 2011 hearing (the original hearing) and because she claimed that the December 22, 2011 decision (the original decision) was obtained by fraud, the second and third of the grounds noted above. The applicant also requested an extension of time to make this application.

Facts and Analysis – Extension of Time Request

According to the *Act* and as set out in the Application for Review Consideration Form, an applicant for dispute resolution regarding a monetary order must be submitted within 15 days of the date the applicant received the decision. Although the landlord stated in her application that she received the order on December 30, 2011, she did not indicate when she received the December 22, 2011 decision. The Residential Tenancy Branch did not receive her application for review until January 18, 2012, the same day the landlord signed the application and took it to the local Service BC Office.

In the Application for Review Consideration, the applicant stated that an extension of time was needed because she was unable to contact the tenant's worker who was on holidays until January 9, 2012. When she could not obtain the letter she was seeking from that worker who had witnessed the condition of the rental unit at the end of this tenancy, the landlord sent in the application for review while she awaited receipt of the letter. She subsequently forwarded a copy of the tenant's worker's letter of January 24, 2012.

The *Act* provides that a DRO may extend or modify a time limit established by the *Act* only in **exceptional circumstances**. I do not accept that the fact that the tenant's worker was on vacation until January 9, 2012 prevented the landlord from applying for review of this decision within the 15 day time period allowed under the *Act*. I also find that the letter in question that the landlord claimed prompted her delay in applying for review would have little effect on the reasons cited in the original decision for dismissing the landlord's application for a monetary award for damage to the rental unit. The January 24, 2012 letter addressed the condition of the premises at the end of this tenancy. The DRO's dismissal of the landlord's application for a monetary award for damage relied on the landlord's failure "to establish that the rental unit was in any different condition when the tenant moved out than the condition when the tenant moved in." As I do not accept that the landlord had adequate reason for delaying her application for review of the original decision beyond the 15-day time limit allowed for submitting a review, I dismiss the landlord's application for an extension of time to submit her application.

My dismissal of the landlord's application for an extension of time to submit the application does not require me to consider the merits of the landlord's application. However, I note that other than the letter from the tenant's worker referred to above, there was little of substance that clearly explained the basis for the landlord's application. She did not provide any details regarding her application of the Application

for Review Form. Rather, she attached copies of notes placed on doors in the rental unit during this tenancy, a September 2, 2011 statement apparently signed by the tenant and witness who attended the original hearing on the tenant's behalf, an August 17, 2011 statement from another tenant in this building, and largely incoherent handwritten notes on what would appear to have been portions of a previous decision of another DRO.

In reviewing these submissions, I note that the statements of September 2, 2011, August 17, 2011, the notes placed on doors, and anything that the landlord wished to present from the portion of the previous decision of another DRO that was relevant to the matter before the DRO could have been entered into evidence by the landlord at the original hearing of this matter. The relevance of the handwritten notes on the previous decision and the January 24, 2012 letter is unclear, given the reasons cited by the DRO in her decision of December 22, 2011.

The review process is not designed to allow an unsuccessful party to reargue the same issues that were before the DRO at the first hearing by claiming she has new and relevant evidence or that the decision was based on fraud. Even if I had allowed an extension of time to the landlord to file her application for review, I find that this application for review fails to demonstrate that much of the information she presented as new is in fact new. As noted above, much of the evidence submitted by the applicant as new was available at the time of the original dispute resolution hearing. At any rate, the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely if a review hearing had been granted. I also find that much of the evidence presented has little if any relevance to the reasons identified in the original decision. Much of this application for review appears more in the nature of an attempt to re-argue the matters that were before the DRO at the original hearing, but which did not result in the outcome the applicant was hoping to achieve. I also find that the 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.

For these reasons, I confirm the original decision in this matter.

Decision

The decision made on December 22, 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: January 26, 2012

Residential Tenancy Branch