



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC, OLC, MNDC, PSF, RP, FF

Introduction

This is an application filed by the landlord on February 10, 2012 for review of a Dispute Resolution Officer decision and order dated February 6, 2012.

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.

Issues

In this matter the landlord made a request for extension of time to apply for review, and also relies on all three grounds; unable to attend the original hearing, new evidence not available at the time of the original hearing, and evidence obtained by fraud.

Concerning the request for extension of time; the decision and order are dated February 6, 2012, and the landlord filed his application on February 10, 2012. Since the dispute relates to a notice to end tenancy, for the landlord to comply with the Act, to make repairs, to provide services required by law or the tenancy agreement, and for monetary compensation, the deadline for the application was February 13, 2012 and it is not necessary that I consider an extension of time.

Facts and Analysis

The application contains information wherein the landlord states that he was not notified of the original hearing date. The landlord provided a letter explaining in part that the manager in charge of the tenancy is away until February 17, 2012, and that the notice of hearing was addressed to his name; as such Canada Post declined to release the notice to the acting manager. The landlord provided a copy of the notice to tenants left by the manager, informing the tenants that he would be away from January 19, 2012, to February 17, 2012, and a copy of the tenant's delivery notice showing that it was addressed in the manager's name.

Residential Tenancy Policy Guideline #24 addresses the grounds for review. Concerning being unable to attend the hearing, the application must establish that the circumstances which led to the inability to attend were both:

- Beyond the control of the applicant, and
- Could not be anticipated

Decision

Based on the landlord's submissions I find that the tenant only served the notice of dispute resolution to the manager by registered mail. The manager notified the tenants that he would be away and he did not receive the tenant's notice. I accept that the landlord was unable to attend for circumstances that were beyond his control. Had the manager attended the hearing, I am satisfied that the landlord's evidence may have produced a different outcome.

The decision dated February 6, 2012 is therefore set aside until a new hearing is reconvened. Both parties will be notified of the new hearing date. Take notice that the tenant must serve the landlord with the application for dispute resolution and both parties must serve their evidence in accordance with the Act.

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: February 20, 2012.

Residential Tenancy Branch