



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

### Introduction

This is an application by the Landlords for a Review of a decision and Order rendered by a Dispute Resolution Officer (DRO) on December 19, 2011 with respect to an application for dispute resolution filed by the Tenant. The Landlords did not attend the dispute resolution hearing. In the Decision issued on December 19, 2011, the DRO found that the Landlords had been duly served by registered mail with the Tenant's Application and Notice of Hearing in accordance with s. 89 of the Act. A Monetary Order in the amount of \$508.85 was granted to the Tenant (which represents double the amount of the security deposit plus interest). The Landlords said they did not know about the hearing because they left Canada on October 25, 2011 to travel to Arizona and did not receive the registered mail.

The Landlords also sought leave to file their application for Review late as they claimed that they only received a copy of the Decision on January 18, 2012 when a family member delivered their mail to them. The Landlords said they then contacted the Residential Tenancy Branch and were advised to file this application. 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 Landlords applied for a Review on the basis of the 1<sup>st</sup> and 2<sup>nd</sup> grounds.

### Issues

1. Are there exceptional circumstances to warrant granting the Landlords' leave to file their Review application late?
2. Have the Landlords satisfied a ground of Review in order to have the hearing of the Tenant's application for dispute resolution reconvened?

## Facts and Analysis

Section 80(c) of the Act says that a Party has 15 days from the date they receive a copy of the Decision or Order to apply for a Review. Section 66(1) of the Act says that “the director may extend a time limit established by the Act but only in **exceptional circumstances** [emphasis added].” RTB Policy Guideline #36 (Extending a Time Period) sets out examples of circumstances that might be considered exceptional such as when a party has been hospitalized and unable to contact another person to act on their behalf. The Guideline also sets out examples of circumstances that are not considered exceptional such as not knowing or paying attention to the applicable law and procedure.

The Landlords said they filed their application for Review late because they only received a copy of the Decision on January 18, 2012 and then had some difficulty downloading the applicable forms but were nonetheless able to make arrangements to have a copy of the Review application form delivered to them in care of another party in Arizona. The Landlords provided a copy of an envelope addressed to them from the Residential Tenancy Branch.

I find that the reasons provided by the Landlords for not filing their Review application on time are not exceptional circumstances. The Landlords received a copy of the Decision on January 18, 2012 and therefore had **until February 2, 2012 at the latest to file their Review application.** Although the Landlords would have received the Review Application form sometime after January 31, 2012 (the post marked date on the envelope), they did not file this application for a further 34 days. Furthermore, I find that the Landlords could have downloaded the required Review Application form found on the Residential Tenancy Branch website from any public computer and did not need to wait for a form to be mailed to them. Consequently, the Landlords’ application for leave to apply late for Review is dismissed without leave to reapply.

As the Landlords have not been granted leave to apply late, I find that it is not necessary to render a decision on the balance of their application. However, I find that it would be appropriate to address the Landlords’ claim that they did not receive the Tenant’s application and notice of the hearing because they left their residence on October 25, 2011 to travel to Arizona. The Tenant provided a Canada Post receipt at the hearing as evidence that she sent the Landlords her hearing package by registered mail on October 12, 2011. A copy of the Canada Post online tracking system for this registered mail shows that a notification card was delivered to the Landlords’ residence on October 13, 2011 and again on October 19, 2011 **prior to the Landlords’ departure.**

Section 90(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (or in this case on October 17, 2011). Consequently, the Dispute Resolution Officer found that there was sufficient evidence to conclude Landlords had been served with the Tenant’s hearing package as required by

s. 89 of the Act. A Party's refusal to pick up the registered mail when they have received a notification card about it is not "a circumstance that is beyond the party's control" that would prevent them from attending a dispute resolution hearing.

### Decision

The Landlords' application to extend the time to apply for a Review of the Decision and Order issued on December 19, 2011 is dismissed without leave to reapply. The Decision and Order issued on December 19, 2011 remain in force and effect.

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: March 13, 2012.

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Residential Tenancy Branch