



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF OPC

### Introduction

This is an application by the tenant for a review of a decision rendered by a Dispute Resolution Officer (DRO) on March 9, 2012, with respect to an application for dispute resolution from the landlord.

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 72 under the *Manufactured Home Park 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 case, the tenant applied for an extension of time to submit his request for review and an application for a review under all three of the above-noted grounds.

### Facts and Analysis - Extension of Time

The *Act* states that an applicant for review has 5 days within which to make an application for Review of this type of decision. An extension would need to be granted to the tenant in order to consider his application.

On his application for review, the tenant noted that he received the DRO's March 9, 2012 by mail on March 17, 2012. The Residential Tenancy Branch (RTB) did not receive his application for review until March 27, 2012. The tenant explained that he was currently working in a camp in Northern Alberta and only has two days off work per month at which time he can pick up his mail. He also noted that he was unable to attend the original hearing because he never received notice of the dispute resolution hearing for the same reason.

The *Act* provides that a DRO may extend or modify a time limit established by the *Act* only in **exceptional circumstances**.

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow a DRO to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. The party putting forward the "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by a DRO in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

Based on the evidence supplied by the tenant, I find that the tenant failed to make an application for review within the proper time limits and failed to provide any information regarding why he delayed filing his application. I find that the tenant has not proven that exceptional circumstances as described above existed such that he was prevented from filing an Application for Review within the proper time limits. I therefore dismiss the tenants' application because he did not file his application for review within the statutory time limits for doing so.

In coming to this determination, I note that the tenant's explanation that he did not receive the DRO's March 12, 2012 decision (the original decision) until March 17, 2012 enabled him to apply for a review of the original decision until March 22, 2012. Although the tenant dated his application for review as March 19, 2012, one of the supporting documents he attached to his application (i.e., a letter he drafted and signed) was dated March 22, 2012. Given that there had already been delay in receiving the original decision, I find that the tenant did not diligently pursue his request for a review of that decision within the 5 day time period for doing so. Due to the distances involved in forwarding mail from his relatively remote location to the Residential Tenancy Branch (RTB), I would have extended the 5 day time period somewhat had he demonstrated that he was taking prompt action to seek a review of the original decision. Based on the March 22, 2012 date of one of his supporting documents for his application and the RTB's receipt of his letter on March 29, 2012, I find it likely that the tenant delayed sending his request for review of the original decision well beyond the 5-day time period established in the *Act*.

I also recognize that the tenant's application maintained that the same mail delivery delays that affected his receipt of the original decision also impacted his ability to attend the original hearing. He maintained that by the time he came to pick up his monthly mail, the landlord's copy of the dispute resolution hearing package had been returned to the landlord. On this point, I also note that the tenant provided email evidence with his

application for review that demonstrated that he was involved in ongoing contact with one of the landlords in January and February 2012 with respect to the landlord's attempts to ensure that repairs were initiated on his manufactured home. These emails show that the tenant was well aware that the landlord was prepared to end this tenancy if he did not comply with the landlord's long-standing requests. Given that the tenant was fully aware that the landlords were considering ending this tenancy, I find that the tenant failed to exercise due diligence when he knew that his access to mail was limited and did not make alternate arrangements whereby he could receive important mail affecting his tenancy.

Since the tenant's application calls into question whether his circumstances prevented him from responding to the case against him, I have also considered the additional evidence that the tenant has identified in his application for review that he maintained would have made a difference to the outcome of the original hearing. For example, the tenant claimed that he now has new evidence that his new tenants occupying his manufactured home in the landlord's manufactured home park are now "willing to buy and take care of the renovations." He stated that a contract was issued with the new tenants before the hearing and that the landlord knew about this change in the ownership of his manufactured home and told the tenants that they should not undertake any renovations. The tenant also claimed that the landlord was acting fraudulently as he never signed for any documents left for him at the manufactured home.

I deny the tenant's request for an extension of time to submit his application for a review of the original decision. Although I have given the tenant's application for a review careful consideration, I also find that his application does not disclose sufficient evidence of a ground for review and does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied. I find that the issues that the tenant has noted that he would have raised had he attended the hearing or that he has submitted as new and relevant evidence have little relevance to the long-standing reasons identified by the landlord for issuing the notice to end tenancy for cause. The tenant's apparent attempts to resolve this matter by selling his interest in the manufactured home to new tenants does not address the lengthy history of non-compliance with the landlord's requests for repairs to the manufactured home, a provision of the tenancy agreement with the landlord.

I confirm the original decision in this matter.

#### Decision

The decision made on March 9, 2012 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 *Manufactured Home Park Tenancy Act*.

Dated: April 05, 2012

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Residential Tenancy Branch