



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

Introduction

On August 16, 2012 Dispute Resolution Officer (DRO) XXXX provided a decision on the occupant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on August 16, 2012.

That decision dismissed the occupant's Application and granted the landlord an order of possession against two third parties not named in the Application for Dispute Resolution. The occupant did not request an extension of time to apply for Review Consideration.

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 applicants submit in their Application for Review Consideration that the third party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control; that they have new and relevant evidence that was not available at the time of the original hearing; and they have evidence that the director's decision was obtained by fraud.

Issues

It must first be determined if the occupant and third party have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the occupant and third party have submitted his Application within the required time frames it must be decided whether the occupant and third party are entitled to have the decision and order of August 16, 2012 suspended with a new hearing granted because they have provided sufficient evidence to establish that they were unable to attend the

hearing for unexpected reasons that were beyond their control; they have new and relevant evidence that was not available at the time of the original hearing; or they have evidence the landlord obtained the decision based on fraud.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 2 days after a copy of the decision or order is received by the party, if the decision relates to an order of possession for a landlord.

From the decision of August 16, 2012 the order provided by the DRO was based on the landlord's verbal request for an order of possession. As such, I find the decision and order the occupant and third party are currently requesting a review on is related to an order of possession for the landlord and as such the occupant and third party were allowed 2 days to file their Application for Review Consideration.

From the submission of the occupant and the third party they indicate that they received the August 16, 2012 decision and order on August 20, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on August 22, 2012 (2 days after receipt of the decision and order). I find the occupant and affected third party have filed their Application for Review Consideration within the required timelines.

The occupant and third party submit that as a result of the DRO's decision to disallow the occupant to represent the third party there was in fact no representation for the third party and combined with the DRO's decision to not grant an adjournment, the third party did not have an opportunity to present any of evidence.

While there are some prerequisites to assessing whether an adjournment may be granted for a DRO to consider whether or not to include a third party Residential Tenancy Branch Rule of Procedure 13.5 states that a DRO may make an order against a third party after the third party has been given an opportunity to present evidence and make a submission.

Based on this and the submission of the occupant and the affected third party, I find that at a minimum the affected third party was not provided an opportunity to make submissions to the hearing that may have impacted the DRO's decision to grant an order of possession to the landlord.

Decision

For the reasons noted above, I find the occupant and affected third party have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the occupant's and third party's copy of this decision. The occupant and third party **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision and order made on August 16, 2012 are suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: August 29, 2012.

Residential Tenancy Branch