



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD

Introduction

On June 19, 2012 Dispute Resolution Officer (DRO) XXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to retain the security deposit and compensation for unpaid rent and advertising and administration fees. The hearing had been conducted on June 19, 2012.

That decision dismissed the landlord's claim in its entirety and ordered the return of the security deposit to the tenant. The landlord requested an extension of time to apply for Review Consideration.

The landlord submits that she was in a cycling accident on June 24, 2012 and admitted to the hospital and released on June 28, 2012. She further states that she had 24 hour care for 2 weeks after release from the hospital.

As a result the landlord states she cannot remember specifically when she received a copy of the decision. However she has stipulated that she received a copy of the monetary order issued to the tenant on July 27, 2012 by Xpresspost.

The landlord submits a portion of a medical record (page 4 of 4) that is dated June 26, 2012 and states the landlord was admitted to a surgical unit and notes the landlord's condition at discharge as stable. The landlord submits she withheld the additional pages of the medical record with her personal medical information.

Division 2, Section 79(2) under the *Residential Tenancy Act (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 landlord submits in her Application for Review Consideration that she has new and relevant evidence that was not available at the time of the original hearing.

Issues

It must first be determined if the landlord has submitted her Application for Review Consideration within the legislated time frames required for reviews or is entitled to an extension due to exceptional circumstances.

If the landlord has submitted her Application within the required time frames or is entitled to an extension it must be decided whether the landlord is entitled to have the decision and order of June 19, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing.

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 15 days after a copy of the decision or order is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of June 19, 2012 the issues before the DRO were related to the landlord's claim for damages and unpaid rent after the tenancy had ended. As such, I find the decision and order the landlord is currently requesting a review on do not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities and as such the landlord was allowed 15 days to file their Application for Review Consideration.

From the landlord's submission she indicates that she is unsure as to when she received the June 19, 2012 decision but that she received the order on July 27, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on September 17, 2012 (52 days after receipt of the order). I find the landlord has not filed her Application for Review Consideration within the required timelines.

Section 66 of the *Act* allows the director to extend a time limit only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that:

"The word 'exceptional' implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a 'reason' without any force of persuasion is merely an excuse. Thus, the party putting forward said 'reason' must have some persuasive evidence to support the truthfulness of what is said."

I accept from the landlord's documentary evidence that she was involved in a cycling collision and that as a result she suffered a fracture to the skull.

The Policy Guideline continues, in regard to an example of being hospitalized at all material times relevant to the request for extension that:

“The evidence which could be presented to show the party could not meet the time line 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.”

As such, while I accept the landlord was not hospitalized for more than 2 to 4 days, she has provided no corroborating evidence as to her incapacity to either submit her Application for Review Consideration after being discharged from the hospital on June 28, 2012 or to contact her agent who attended the hearing to have the agent act on her behalf and submit her Application for Review Consideration.

The landlord did not, for example, provide any information in the form of a medical record or a letter from her physician providing details of her incapacity to meet the time frame or contact her agent who attended the hearing on her behalf to submit the Application. Even if she were not able to respond with 15 days of receiving a copy of the decision; the landlord has provided no corroborating evidence as to why she could not submit or have her agent submit an Application for Review Consideration with 15 days of receiving a copy of the order on July 27, 2012.

For these reasons, I find the landlord has not established exceptional circumstances sufficient to warrant the granting of an extension on the time to submit her Application for Review Consideration.

As to the grounds the landlord has submitted for consideration:

1. Tenancy Agreement – the landlord submits the tenancy agreement was submitted with her Application for Dispute Resolution. While I accept the landlord herself did not attend the hearing it was incumbent upon her to ensure her agent who did attend was aware of all of the evidence that was submitted. There is nothing in the original hearing decision that states the landlord’s agent notified the DRO that the tenancy agreement had been provided as evidence. Further, from the decision it appears that there were no disputes about the terms of the tenancy agreement as outlined in the original decision and as such I find the provision of a copy of the written tenancy agreement would have no impact on the decision or order.
2. In relation to the landlord’s new evidence to substantiate her claim of loss of rental income and the steps taken to mitigate any loss she submits that after speaking to two different Information Officers at the Residential Tenancy Branch she had “submitted what was required of her” and that she “was not guided properly to do so.

Applicants are provided with a hearing package that includes a Fact Sheet entitled “The Dispute Resolution Process” that provides information for the Applicant and Respondents in a dispute on how to prepare for a hearing. On this Fact Sheet there

are many references to additional material related to evidence including the Residential Tenancy Branch Rules of Procedure and another Fact Sheet entitled "Deadlines for Serving Evidence and Submitting It to the Residential Tenancy Branch".

Information Officers provide *information* to applicants about the processes and deadlines associated with a Dispute Resolution hearing; while they may provide advice on what types of evidence might be considered they do not provide direction on what specific evidence to submit or not to submit, the choice of what evidence either party intends to rely upon is the choice of that party.

As such, I find the reasons stipulated by the landlord in her Application for Review Consideration do not provide sufficient justification as to why these submissions were not available for the original hearing and I therefore find that these submissions are not new evidence.

3. In regard to the landlord's submission of a letter from a film producer, she provides no reason as to why this letter was not available prior to the hearing.

Decision

For the reasons noted above, I dismiss the landlord's Application for Review Consideration.

The decision made on June 19, 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 *Residential Tenancy Act*.

Dated: September 20, 2012.

Residential Tenancy Branch