



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

Introduction

On September 17, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The hearing had been conducted on September 17, 2012.

That decision granted an order of possession and a monetary order in the amount of \$412.50. The tenant requested an extension of time to apply for Review Consideration because she states she received the "letter on the 18 of Sep. The hearing was on the 17 of Sep."

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 tenant submits in her Application for Review Consideration that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control.

Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether the tenant is entitled to have the decision and orders of September 17, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she was unable to attend the hearing for unexpected reasons that were beyond her control.

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 or a landlord's notice to end a tenancy for non-payment of rent.

From the decision of September 17, 2012 decision the issues before the DRO were related to the landlord's notice to end a tenancy for non-payment of rent. As such, I find the decision and order the tenant is currently requesting a review allows the tenant was allowed 2 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the September 17, 2012, decision and order on September 18, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on September 19, 2012 (1 day after receipt of the decision and order). I find the tenant has filed their Application for Review Consideration within the required timelines and does not require an extension to submit her Application.

The tenant submits that she was unable to attend because she did not receive the notification in time. She further submits that she "did not receive the papers of hearing until the day after according to the post mark on envelop."

The tenant submitted a copy of an envelope from the Office of Housing and Construction Standards, Residential Tenancy Branch (RTB) postmarked September 17, 2012. The RTB does not usually send out hearing notice from the branch to a respondent, especially the day after the hearing. I find, based on the balance of probabilities that this envelope provided the tenant with the decision that was written on September 17, 2012.

DRO XXXXX writes in her decision:

"She [the landlord] further affirmed that the female Tenant, B.H. was personally served the hearing documents when they were left with her on August 15, 2012, in the presence of a witness."

The tenant does not, in her Application for Review Consideration, address the DRO's understanding of the landlord's testimony that she served the tenant with notice of hearing documents on August 15, 2012.

As I have found the tenant received the decision in this case on September 18, 2012 in the envelope postmarked September 17, 2012 and the tenant has not provided any submission or evidence to contradict the statement in the decision that she had been served with notice of this hearing on August 15, 2012, I find the tenant has failed to establish that she could not attend this hearing for reasons beyond her control.

Decision

I dismiss the tenant's Application for Review Consideration.

The decision made on September 17, 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 24, 2012.

Residential Tenancy Branch