



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION APPLICATION

Dispute codes: CNC

Introduction

On September 17, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on September 17, 2012.

That decision granted the notice to be set aside. The landlord requested an extension of time to apply for Review Consideration. The landlord requests an extension because she states she was given "miss information on September 24, 2012 and sent in a request for clarification."

Division 2, Section 72(2) under the *Manufactured Home Park 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 to submit her Application.

If the landlord has submitted her Application within the required time frames it must be decided whether the landlord is entitled to have the decision of September 17, 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 73 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision within 5 days after a copy of the decision is received by the party, if the decision relates to a notice to end tenancy for any reason other than a notice to end tenancy for non-payment of rent.

From the decision of September 17, 2012 the issues before the DRO were related to a notice to end tenancy for cause. As such, I find the decision and order the landlord is currently requesting a review on allowed her 5 days to file her Application for Review Consideration.

From the landlord's submission she indicates that she received the September 17, 2012 decision on September 20, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 1, 2012 (11 days after receipt of the decision and order). I find the landlord has filed her Application for Review Consideration within the required timelines.

Section 59 allows me to consider an extension to allow the landlord to submit her Application for Review Consideration at time after the time limit noted above only in exceptional circumstances. Residential Tenancy Policy Guideline #36 states that exceptional means an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word also implies that the reason for failing to comply is strong and compelling.

The guideline goes on to provide examples of what might **not** be considered "exceptional" and includes "the party did not know the applicable law or procedure." As the landlord submits that her reasons were that she was unaware of the correct applicable procedure is not sufficient to grant an extension of time to submit her Application for Review Consideration.

Even if I were to allow the extension the evidence the landlord has submitted as new and relevant is a copy of a decision that indicated that another tenancy in another property was not covered under the *Act*. While this decision has been on the public Residential Tenancy Branch Website since February 2011 it cannot be considered new evidence. In addition the decision submitted states: "At the outset of the hearing the parties agreed that property and site where the tenant's fifth wheel trailer is parked is a campground and not a manufactured home park."

The decision clearly shows that issue of jurisdiction was agreed upon by mutual agreement. The case under Review Consideration the parties dispute whether or not the DRO had jurisdiction, as such I find this evidence submitted by the landlord in her Application for Review Consideration is not relevant and would have no impact on the original decision.

Decision

For the reasons noted above, I dismiss the landlord'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: October 04, 2012.

Residential Tenancy Branch