



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: FF MNR OPC OPR

### Introduction

On September 26, 2012 Dispute Resolution Officer (DRO) XXXX provided a decision on the landlord's Application for Dispute Resolution seeking an order of possession for cause and for unpaid rent and for a monetary order for unpaid rent. The hearing had been conducted on September 26, 2012.

That decision dismissed the landlord's request for an order of possession based on cause but granted an order of possession and a monetary order for unpaid rent. The tenant requested an extension of time to apply for Review Consideration.

The tenant has submitted a letter from his physician dated September 26, 2012 stating that for medical reasons the tenant cannot attend work for 7 days and that the tenant will attend the physician's office on September 28, 2012 for a follow up. The tenant did not provide any medical documentation from his follow up appointment.

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 tenant submits in his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control; that he has new and relevant evidence that was not available at the time of the original hearing; and he has evidence that the director's decision was obtained by fraud.

### Issues

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

If the tenant has submitted his Application within the required time frames it must be decided whether the tenant is entitled to have the decision of September 26, 2012 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control; he has new and relevant evidence that was not available at the time of the original hearing; or he has evidence the tenant 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 is received by the party, if the decision relates to a landlord's notice to end tenancy for non-payment of rent.

From the decision of September 26, 2012 the issues before the DRO were related to the landlord's 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the decision the tenant is currently requesting a review on allows the tenant 2 days to file their Application for Review Consideration.

From the tenant's submission he indicates that he received the September 26, 2012 decision on September 27, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 9, 2012 (11 days after receipt of the decision and order). I find the tenant has failed to file his Application for Review Consideration within the required timelines.

However, the tenant has requested an extension to this timeline for medical reasons. Section 66 of the *Act* allows me to extend a time limit in exceptional circumstances. I accept from the tenant's submission of medical documentation that he was sufficiently ill to prevent him from filing his Application for Review Consideration within 2 days and I find that he filed his Application within a reasonable time after that illness. I find the tenant has established extraordinary circumstances and grant him the extension to file his Application for Review Consideration.

As the tenant has submitted all three grounds as reasons to be granted a new hearing I note that in each of the sections of the Application for Review Consideration the tenant is referring to evidence that relates the reasons for cause that the landlord was attempting to end the tenancy.

The tenant submits for example, under new and relevant evidence, he believes "the caretakers were misinformed on my conduct where as my other nieghbors will confirm these allegations. Pictures were poor not showing any of my constructive beatty flowers."

The tenant has not provided additional or new evidence or any evidence to substantiate his claim of fraud on the part of the landlord.

As noted above the landlord did not obtain an order of possession based on cause but rather on the non-payment of rent that the tenant agreed with during the hearing, as he was in attendance, according to the September 26, 2012 decision.

For these reasons, I find the tenant has failed to establish that he has any new evidence. If he did have new evidence the tenant has failed to establish that it was relevant to the decision. And finally, the tenant has failed to establish the landlord obtained the decision to be granted an order of possession for unpaid rent based on fraud.

### Decision

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

The decision made on September 26, 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 16, 2012.

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Residential Tenancy Branch