



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

### Introduction

On October 5, 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 for unpaid rent. The hearing had been conducted on October 5, 2012.

That decision granted the landlord an order of possession and a monetary order in the amount of \$1,410.00. The tenants did not request an extension of time to apply for Review Consideration.

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 tenants submits in their Application for Review Consideration that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their 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 tenants have submitted their Application for Review Consideration within the legislated time frames required for reviews.

If the tenants have submitted their Application within the required time frames it must be decided whether the tenants are entitled to have the decision and orders of October 5, 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 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 a landlord's notice to end the tenancy for non-payment of rent.

From the decision of October 5, 2012 the issues before the DRO were related to the landlord's issuance of a 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find the decision and order the tenants are currently requesting a review on allowed the tenants 2 days to file their Application for Review Consideration.

From the tenants' submission they indicate that they received the October 5, 2012 orders on October 5, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 9, 2012 (The next business day after receipt of the order). I find the tenants have filed their Application for Review Consideration within the required timelines.

The tenants submit that they were not able to attend the hearing because they had not received a notice to attend the hearing. The tenants submit that they have rent receipts showing that the value of the landlord's monetary claim is incorrect.

The presumption of receipt of documents that are served in accordance with the *Act* is a rebuttable presumption and as the tenant's submit that they had not received notice of the original hearing, I find it necessary in accordance with the principles of natural and administrative justice to grant a new hearing on these matters.

As I have determined the tenants have established sufficient ground for a new hearing based on his inability to attend the hearing for reasons beyond their control, I make no findings on the tenants' submission of other grounds for Review Consideration.

### Decision

For the reasons noted above, I find the tenants have established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenants' copy of this decision. The tenants **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 made on October 5, 2012 is 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: October 18, 2012.

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Residential Tenancy Branch