



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: AAT OPT RPP

Introduction

On October 2, 2012 Dispute Resolution Officer (DRO) XXXX provided a decision on the tenant's Application for Dispute Resolution seeking an order of possession and return of personal property. The hearing had been conducted on October 2, 2012.

That decision dismissed in the tenant's Application in its entirety because the tenant failed to attend the hearing. The tenant did not request an extension of time to apply for Review Consideration.

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 of October 2, 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 within 2 days after a copy of the decision is received by the party, if the decision relates to an order of possession for a tenant.

From the decision of October 2, 2012 the issues before the DRO were related to the tenant's Application for an order of possession. As such, I find the decision the tenant is currently requesting a review on allows 2 days to file her Application for Review Consideration.

From the tenant's submission she indicates that she received the May 14, 2012 decision on October 14, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on October 15, 2012 (1 day after receipt of the decision). I find the tenant has filed her Application for Review Consideration within the required timelines.

The tenant has submitted medical documentation from a physician to confirm that she was unable to attend the conference call hearing for medical reasons. As no evidence or testimony was considered in the hearing I accept that had the tenant attended the hearing she would have provided testimony relevant to her Application.

I find the tenant has provided sufficient evidence to establish that she was unable to attend the hearing for reasons that were unanticipated and beyond her control.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's copy of this decision. The tenant **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 2, 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.

Residential Tenancy Branch