



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

On October 15, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the cross Applications for Dispute Resolution. The landlord had been seeking an order of possession and a monetary order and the tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The hearing had been conducted on October 15, 2012

That decision granted the landlord an order of possession and a monetary order in the amount of \$800.00. The tenant requested an extension of time to apply for Review Consideration because he is in school and "till the time I figure out the clash of dates I was too late.

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 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; and that he has new and relevant evidence that was not available at the time of the original hearing.

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 he is entitled to have the order of October 15, 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 and he has new and relevant evidence that was not available at the time of the original hearing.

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 tenancy for non-payment of rent.

From the decision of October 15, 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 order the tenant is requesting a review allows 2 days to file his Application for Review Consideration.

From the tenant's submission he indicates that he received the October 15, 2012 decision on October 16, 2012 and filed their Application for Review Consideration with the Residential Tenancy Branch on October 17, 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.

The tenant submits that he is on an internship from school and could not set his schedule. He works as part of a team and he needs another week. The tenant also submits that he has new and relevant evidence in the form of his school schedule. However the tenant has not provided a copy of his schedule.

While I accept the tenant may not have been able to attend the hearing because of his schooling/internship schedule I find the schedule was not unanticipated and because the original hearing dealt with both the tenant's Application and the landlord's Application the tenant was aware of the hearing date for his own Application well in advance of the hearing.

The tenant could have made efforts to have his hearing re-scheduled prior to the hearing or had an agent represent him at the hearing to either complete the entire hearing or request and adjournment. Failure on the tenant's part to take these steps prior to the hearing does not constitute the ground that the tenant was unable to attend the hearing for unanticipated reasons beyond his control.

In addition the tenant's school and internship schedule is identified as new and relevant evidence, however the tenant has not indicate how his schooling schedule is relevant to the matters that were being adjudicated in the hearing such as unpaid rent. Therefore I find the tenant has not established either new or relevant evidence that would change the outcome of the original decisions.

Decision

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

The decision made on October 15, 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 24, 2012.

Residential Tenancy Branch