



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

Introduction

On December 5, 2012 Arbitrator XXXXXXX provided a decision on the landlord's Application for Dispute Resolution seeking to an order of possession and a monetary order. The hearing had been conducted on December 4, 2012.

That decision granted the landlord an order of possession and a monetary order in the amount of \$3,650.00 for unpaid rent and the filing fee. 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 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.

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 December 5, 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.

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 or order relates to a landlord's notice to end tenancy for non-payment of rent.

From the decision of December 5, 2012 the issues before the Arbitrator were related to the landlord's notice to end tenancy for non-payment of rent. As such, I find the decision the tenant is requesting a review on allowed the tenant 2 days to file his Application for Review Consideration.

From the tenant's submission he indicates that he received the December 5, 2012 decision on December 11, 2012 and filed his Application for Review Consideration with the Residential Tenancy Branch on December 13, 2012 (2 days 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 was unable to attend the hearing because: "did not receive any notice of the hearing at all. Canada Post returned the said notice to the sender. A decision was made at the hearing completely without my knowledge or involvement."

The tenant also states in his Application for Review Consideration that the testimony he would have provided, had he attended the hearing, would have been: "testimony to the misuse of tenancy act procedures."

From the tenant's submission I accept that he was aware that a registered mail package had been sent to him. Tracking information from Canada Post shows the tenant was provided with a notice that he had registered mail and that a secondary notice was provided to tenant. As such, I find the tenant deliberately avoided service of the notice of hearing and that he cannot now rely upon his deliberate avoidance to say he was not informed of the hearing.

Further, as the hearing was to deal with the non-payment of rent and the tenant has indicated that he would provide testimony of the landlord's "misuse of tenancy act procedures" and says nothing about providing any testimony regarding the non-payment of rent or the landlord's issuance of the 10 Day Notice, I find that even if I were to grant a new hearing the tenant has not provided any evidence that would impact the outcome of the original decision.

Decision

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

The decision made on December 5, 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: December 20, 2012.

Residential Tenancy Branch