



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

This is an application by the landlord for a review of a decision rendered by a Dispute Resolution Officer (DRO) on November 30, 2012 (the original decision), with respect to an application for dispute resolution from the tenant.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

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 landlord applied for a review on the basis that she had new and relevant evidence that was not available at the time of the original hearing. She also applied for an extension of time to submit her application for review.

Facts and Analysis

The *Act* states that an applicant for review has 15 days within which to make an application for Review. The *Act* provides that an Arbitrator may extend or modify a time limit established by the *Act* only in **exceptional circumstances**.

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an Arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

In this case, the landlord provided the following explanation as to why she needed an extension of time to file her application for review:

...I was unable to complete this application by the time allowed. I am requesting for an extension of time to apply for review because I was away on holidays from Dec 10th – Dec 27th. I did not have travel insurance so I was unable to cancel my

flight to attend this matter. Please see attached travel documents. All of my immediate family as well was travelling with me which left no one to attend this matter for me.

Her application for review indicated that she received her copy of the DRO's decision on December 9, 2012. She did not file her application for review until January 2, 2013, well after the expiration of the 15-day time period established under the *Act*.

Although the landlord attached an email referring to a December 11, 2012 trip itinerary for a trip to Florida, there is little specific information referencing her or describing the period when she was out of the country. She included email links to information that may have confirmed that she was out of the country during this period, but did not print any of the email links, documents or itineraries. While it appears that the landlord may have flown to Florida on December 11, 2012, there is no information to confirm that she remained there until December 27, 2012.

I find that the landlord has not provided any explanation as to why she could not have taken information with her to prepare for an application for review. Similarly, having received the original decision before she left for vacation, she did not ask someone else to look after this matter for her while she was away. Rather, she appears to have waited until she returned to deal with this matter, which took another six days after she returned.

I find that the landlord has not proven that exceptional circumstances as described above existed such that she was prevented from filing an Application for Review within the proper time limits. I find that the landlord's application fails to meet most if not all of the six criteria outlined above in considering whether there were exceptional circumstances that prevented her from filing her application on time. The landlord appears to have done little to attend to this matter until she returned from holidays.

I also find that it unlikely that the original decision would have varied had the landlord been able to submit the unsigned email apparently received from the personal email account of the tenant's social worker. This document is not a "letter" as was claimed in the landlord's request for consideration of new and relevant evidence. Even if this "evidence" of questionable source had been available to the DRO at the original hearing, I find it unlikely that this new evidence would have led to a different decision, given the other evidence cited in the original decision.

I therefore dismiss the landlord's application to extend the time to file an Application for Review. Overall, I also find that the landlord's application does not disclose sufficient

evidence of a ground for review and does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the DRO should be set aside or varied.

I confirm the original decision in this matter.

Decision

The decision made on November 30, 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: January 08, 2013