



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR OPR

### Introduction

This is an application by the tenant for review consideration of the February 22, 2013 decision rendered on the landlord's application after a hearing held on February 22, 2013. The landlord was granted an Order of Possession and a monetary order based on a Ten Day Notice to End Tenancy for Unpaid Rent. The tenant did not appear at the hearing held on February 22, 2013.

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 not available at the time of the hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The tenant has submitted the application for Review Consideration based on the grounds;

- 1) *that the tenant was unable to attend due to circumstances beyond the tenant's control, and*
- 2) *that new and relevant evidence has come to light that was not available and could not be obtained at the time of the original hearing.*

The tenant also requested more time to submit the request for Review Consideration, as the application was made beyond the statutory deadline to apply.

### Preliminary Matter-Request for Extension of Time to Apply

The tenant indicates in her Application for Review Consideration that the decision from the February 22, 2013 was not actually received by the tenant until February 25, 2013.

The tenant then made an application for a Request for Review Consideration and signed it on March 8, 2013. This application was received by the Residential Tenancy

Branch on March 8, 2013, which is over 10 days after the tenant had received the Dispute Resolution decision on February 25, 2013.

Section 80 of the Act states that a party must make an application for review of a decision or order of the director within whichever of the following periods applies:

(a) **within 2 days** after a copy of the decision or order is received by the party, if the decision or order relates to

(i) the unreasonable withholding of consent, contrary to section 34 (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,

(ii) a notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], or (my emphasis)

(iii) an order of possession under section 54 *[order of possession for the tenant]*, 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]*;

Pursuant to section 80(a) of the Act, as excerpted above, I find that the tenant had 2 days from February 25, 2013, which was the date the decision was received, to make an Application for Review Consideration. I find that the tenant would need to submit a completed application for processing on, or before February 28, 2013.

Given the above, I find that the tenant's application was submitted beyond the statutory 2-day deadline under the Act.

However, the tenant made a formal request asking to be granted an extension of time to make the application for review consideration. In the box with the heading:

*"State why you were not able to apply for review within the required time frame and LIST and ATTACH evidence, such as a copy of your hospital admissions form."*

The tenant had provided the following information,

*" - couldn't find papers that gave me time, #, and what to do.*

*- cell was dead*

*- had all 3 girls by myself – (boyfriend's name) in jail"*

(Reproduced as written, with identification removed)

No evidence, such as proof of an illness, had been submitted to support the tenant's reasons for not applying on time, nor to verify any of the reasons listed above.

However, other evidence was supplied by the tenant and this included written statements about the condition of the residence, photos, a hand-written witness statement about the state of the rental unit and a list of values of personal items belonging to the tenant.

Although section 80(a) of the Act requires that the party must make their application for review within 2 days after a copy of the decision or order has been received by the party, section 66 of the Act does permit a Dispute Resolution Officer to grant an extension in exceptional circumstances.

What may constitute “*exceptional circumstances*” is discussed in the *Residential Tenancy Policy Guideline*, which states that the word “*exceptional*” means that an ordinary reason given by a party for not complying with a time limit, will not suffice to allow an arbitrator to extend that time limit.

The word “*exceptional*” implies that the reason for failing to do something within the time required is very strong and compelling and this is supported by higher Court decisions one of which noted, that “*a ‘reason’ without any force of persuasion is merely an excuse. Thus, the party putting forward said ‘reason’ must have some persuasive evidence to support the truthfulness of what is said.*”

I find that the reasons for the delay provided by the tenant were that she couldn’t find the papers, the cell phone was not functioning and she was caring for her children. Even if accepted as true, none of these reasons would be considered as an exceptional circumstance that would justify granting an extension to submit a late application for Review Consideration.

Based on the above, I decline to grant the requested extension to apply. Accordingly, I find that the tenant’s Application for Review Consideration is beyond my authority to determine, as it was not made within the statutory deadline imposed by the Act.

Therefore this Review consideration cannot proceed and I hereby dismiss the tenant’s application without leave

### **Decision**

The tenant’s application is not successful. The tenant’s request for an extension of time to make the application beyond the 2-day statutory deadline is declined and the application therefore cannot be considered because it was filed too late.

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: March 19, 2013

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Residential Tenancy Branch