



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

This is an application by the tenant for a review of a decision rendered by an Arbitrator on March 18, 2013 (the original decision). The original decision considered an application for dispute resolution from the landlord for a monetary award for unpaid manufactured home park pad rental and an Order of Possession for unpaid pad rental.

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

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- 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 72(2) under the *Manufactured Home Park Tenancy Act* (the *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 applied for a review of the original decision on the basis of all three of these grounds. She also requested an extension of time to apply for her review.

Facts and Analysis - Extension of Time

On her application for review, the tenant noted that she received the Arbitrator's March 18, 2013 decision on April 6, 2013 from a Court Appointed Bailiff, at which time she was also served a Writ of Possession issued by the Supreme Court of British Columbia. The Residential Tenancy Branch (RTB) did not receive the tenant's April 12, 2013 application for review until April 12, 2013, when she asked the Service BC office in her community to fax her application to the RTB.

The *Act* states that an applicant for review has 2 days within which to make an application for Review of this type of decision. An extension of time would need to be granted to her in order to consider her application. Although the tenant explained that she was unable to attend the March 18, 2013 hearing (the original hearing) because of medical reasons, she provided no explanation for why she did not submit her application for review within the 2-day time frame required by the *Act*.

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. The party putting forward the "reason" must have some persuasive evidence to support the truthfulness of what is said.

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 the explanation the tenant provided in her request for an extension of time to apply for review, the tenant noted that she contacted the RTB on March 15, 2013, advising that she would be unable to attend the March 18, 2013 hearing. She maintained that she copied and faxed admission and presurgical orders to the RTB. She attached copies of these admission and presurgical documents with her application for review.

I find that the tenant failed to make an application for review within the proper time limits and failed to provide any information regarding why she delayed filing her application. I find that the tenant 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 therefore dismiss the tenants' application because she did not file her application for review within the statutory time limits for doing so.

In making this decision, I have also considered whether there is merit to the tenant's application for review which would have enabled me to allow her application for review had she applied within the time frame established under the *Act*. I have outlined my review of the three grounds cited in the tenant's application as follows:

Facts and Analysis – Unable to Attend

In order to meet this test, the application must establish that the circumstances which led to the inability to attend the hearing were both:

- beyond the control of the applicant, and
- could not be anticipated.

A hearing is a formal, legal process and parties should take reasonable steps to ensure that they will be in attendance at the hearing.

In the Application for Review Form, the tenant was asked to explain what happened that was beyond her control or that could not have been anticipated that prevented her from attending the original hearing. She provided the following explanation.

Medical reasons, and prescribed medications, treatments and surgeries prevented my attendance at the hearing and on the day the order was obtained. On advisement of my gastroenterologist, due to the medications I was not to operate machinery, make any financial or business decisions, and to refrain from computer use as the medications prevented logical, rational thought. Essentially, for four days after the administration of (the medication), I was legally impaired...

The RTB has no record of having received any faxes or any other written evidence from the tenant prior to the original hearing. In reviewing the "Day Surgery & Surgical Admission" documents that the tenant attached to her application for review, I find reference to surgery dates of March 22, April 22 and May 15, presumably in 2013. Although the tenant also attached an undated email, the only substantive information on this email is that she appeared to be undergoing a colonoscopy and provided her own handwritten statement that she was "not able to participate in the scheduled arbitration due to being in surgery having the 1st of 4 procedures." She noted that the landlord had been paid "partial rent" but refused to give her receipts.

In reviewing these documents, I find no reference in any documents provided by health care staff to confirm that the tenant underwent a medical procedure that prevented her from participating in the teleconference hearing on March 18, 2013. Rather, it would seem from the information provided by the tenant that her day surgery was scheduled for March 22, 2013. In addition, the tenant has not provided any documentation from a health care professional to substantiate her assertion that the medication she was taking on March 18, 2013 prevented her from representing herself in a teleconference hearing on March 18, 2013. Based on the information in the tenant's application for review, the tenant clearly knew that she would be unable to participate in the original hearing by at least March 15, 2013, when she claims to have contacted the RTB. She acknowledged that she did not receive any assurance that an adjournment of the original hearing would be granted. By contacting the RTB so late with a request for an adjournment, she would have needed to appoint an agent to represent her interests at the original hearing or request an adjournment on her behalf at the original hearing. I find that the tenant's failure to appoint someone to act as her agent does not satisfy the requirement that her failure to have her interests represented at the original hearing could not have been anticipated. Finally, and despite the tenant's claims that the landlord gave false information at the original hearing regarding the payment of January and February 2013 rent, the tenant's own written evidence attached to her application stated that the landlord had "been given partial rent." By admitting that partial rent had

been provided to the landlord, this implies that the tenant had not paid all of her rent when she claims to have submitted her adjournment request.

For the reasons outlined above and based on the evidence submitted by the tenant, I find that the tenant has not identified sufficient evidence to enable me to order a review of this decision on the basis of a party being unable to attend the hearing, even if she had been granted an extension of time to file her application for review. I also find that the tenant's evidence is unclear and does not give full particulars of the issues submitted for review or of the evidence on which she intends to rely.

Facts and Analysis – New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when the applicant has evidence which meets **all** five criteria will a review be granted on this ground.

It is up to a party to prepare for a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing.

“Evidence” refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence. Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

“New” evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained before the hearing took place. Evidence that “would have had a material effect upon the decision of the Arbitrator” is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

The tenant's application for review on the basis of new and relevant evidence appears to rely on her claim that the landlord admitted that he gave false evidence to the arbitrator about unpaid rent. She also maintained that a review should be granted on the basis of threats and statements made to the tenant, her children and neighbours. She submitted a video to support her assertions, although the sound on her video could not be heard.

I am at somewhat of a loss to understand how the original decision should be reconvened because of incidents that the tenant maintains occurred **after** the Arbitrator issued her original decision. While this evidence is clearly new, I find that it meets none of the other four required criteria outlined above. Statements made or incidents that occurred following the hearing have no bearing on the evidence that was before the Arbitrator when she made her original decision. Her decision cannot be reconvened on the basis of subsequent interactions that the tenant found contentious.

In the original decision, the Arbitrator found that the tenant was served with the 10 Day Notice, did not pay all of the outstanding rent, and had not applied for dispute resolution. Based on the Arbitrator's findings and in accordance with section 42(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. As noted above, the tenant provided conflicting evidence regarding her payment of rent, admitting in some of her written evidence that she had not paid all of her rent in full. Since the tenant's application for review failed to address her failure to take action within five days of receiving the 10 Day Notice, her written evidence, relying primarily on her claim and the claim of others that she paid her rent, has little relevance to the original decision. In the absence of credible evidence from the tenant in this regard, I find that the issues raised by the tenant, including her video, have little relevance to the matters before the original Arbitrator and would not have had a material effect on her original decision.

Under these circumstances, I find that the tenant has not identified sufficient evidence to enable me to order a review of this decision on the basis of new and relevant evidence, even if she had been granted an extension of time to file her application for review.

Facts and Analysis - Fraud

The tenant commenced the portion of her application for review on the basis of fraud by maintaining that "All of the information was false." Although she referred to witness testimonies that would support her allegations, the tenant provided only a single written statement, much of which involves issues and concerns that arose after the hearing was concluded and the original decision issued. She also appears to be attempting to raise

evidence that could have been provided at the original hearing if she had attended that hearing or appointed an agent to act on her behalf at that hearing.

I also find that the tenant's application for fraud included considerable unrelated and clearly irrelevant issues to an application for non-payment of pad rental. For example, she raised questions about conditions within her manufactured home, including furnace, water and black mould, all of which would appear separate from whether she did or did not pay her pad rental to the landlord.

It is not enough to allege that someone giving evidence for the other side made false statements at the hearing. In this case, given the tenant's failure to address her lack of action regarding the 10 Day Notice within five days of receiving that Notice, it is unclear to what extent the Arbitrator's original decision relied on the alleged fraudulent evidence. Even if the tenant were not late in submitting her application for review, I find that her application for review discloses insufficient basis for establishing that the original decision was based on fraud. I find that the tenant has not identified sufficient evidence to enable me to order a review of this decision on the basis of fraud and has not disclosed any basis upon which, even if the submissions in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

Overall, the tenant's application does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the original Arbitrator should be set aside or varied. The original decision is therefore confirmed.

Decision

The decision made on March 18, 2013 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 *Manufactured Home Park Tenancy Act*.

Dated: April 25, 2013

Residential Tenancy Branch