



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC O

Introduction

A Hearing was held on April 8, 2013 to deal with the Tenant's application for compensation for damage or loss. On April 8, 2013, a Decision was issued and the Tenant was provided with a Monetary Order in the amount of \$1,250.00.

Section 80 of the Act provides that a party must file an Application for Review Consideration **within 15 days** after a copy of the Decision is received by the party, when the Decision relates to a monetary order. The Landlords' Application for Review Consideration indicates that they received a copy of the Arbitrator's Decision on April 19, 2013. The Landlords filed their Application for Review Consideration on May 10, 2013, which is **21 days after** they received the Decision.

The Landlords are applying for an extension of time to apply for this Review, under the provisions of Section 66 of the Act. Section 66(1) of the Act provides that the Director may extend a time limit established by the Act **only in exceptional circumstances**.

Residential Tenancy Policy Guideline 36 provides the following explanation with respect to "exceptional circumstances":

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.** Furthermore, as one Court noted, 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.*

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 wilfully 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***

(emphasis added)

In their application for an extension of time, the Landlords state: "I received this Decision on April 19th/2013 by post, in Israel, as I was leaving for the airport to attend a family reunion in Alberta, April 20 – 27/13. And I have attached my plane ticket details and accommodation details."

The Landlords' itinerary indicates that they were in Canada from April 19 until May 14, 2013. The Landlords did not explain why they did not file an Application for an extension of time until May 10, 2013.

I find that the Landlords did not provide sufficient evidence that they took reasonable and appropriate steps to comply with the relevant time limit, or that they brought the application as soon as practical under the circumstances.

Therefore, the Landlords' **application for an extension of time to file their Application for Review Consideration is dismissed.**

It is important to note that the Landlords stated in their Application that they did not attend the Hearing on April 8, 2013, because the Notice of Hearing documents were sent to an address that was incorrectly given on the Tenant's Application (the rental

unit). However, the Arbitrator found that the Tenant served the Landlords at their mailing address, which is the same address in Israel that the Landlords gave on their Application for Review Consideration.

In addition, the Landlords indicated on their Application for review that they believe they have a claim for damages to the rental unit. The Decision of April 8, 2013, provided the Tenant a monetary award because the Arbitrator found that the Landlords had cashed a post-dated cheque for a month after the tenancy had ended, and therefore breached the Act by taking rent for a period of time when it was not due to them. No consideration was made with respect to any claim by the Landlords for damages against the Tenant because the Landlords had not filed a claim for damages.

Therefore, the Landlords are at liberty to file their own application for damages within the time frames set out in the legislation.

Conclusion

The Landlord's request for an extension of time to file an Application for Review Consideration is dismissed. The original Decision and Orders dated April 18, 2012, are confirmed.

The Landlords are at liberty to file their own Application for Dispute Resolution to seek compensation against the Tenant for any damage or loss they suffered as a result of this tenancy.

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: May 21, 2013

Residential Tenancy Branch