



# 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 and Orders rendered by an Arbitrator on May 30, 2013 (the original decision), with respect to an application for dispute resolution for an Order of Possession and a monetary Order submitted by the landlord. The landlord's application was initiated by way of the Residential Tenancy Branch's (the RTB's) direct request process, in which no participatory hearing is conducted.

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 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 application for review requested a review hearing on the basis that the tenant(s) was/were unable to attend the original hearing because the tenant was not notified of the hearing date, the first of the grounds outlined above. The applicants for review did

not request an extension of time to apply for review. Although they did not indicate that they were also asking for a review on the basis of fraud, they did complete the fraud section of the application for review form.

### Facts and Analysis

On the application for review, the applicants noted that they received the original decision when it was delivered to them at their door on June 5, 2013. On June 11, 2013, the applicants signed their application for review form. The RTB received their application for review by way of a fax from a Service BC office on June 14, 2013.

The *Act* states that an applicant for review of a matter such as this one in which an Order of Possession was issued has two days within which to make an application for Review. Although the applicants did not request an extension of time in their application for review, an extension would need to be granted in order to consider their application. They provided no explanation as to why they did not apply for a review of this matter within 2 days of receiving the original decision.

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.

Based on the evidence supplied by the applicants, I find that the tenant made no request for an extension of time to file the application for review. I find that the tenant(s) failed to make an application for review within the proper time limits and failed to provide any information regarding why the application was filed well beyond that deadline. I find that the applicant for review has not proven that exceptional circumstances as described above existed such that the applicant (or an agent looking after this matter on her behalf) was prevented from filing an Application for Review within the proper time limits. I therefore dismiss this application because the applicants did not file this application for review with the statutory time limits for doing so.

I also note that the applicants' primary stated grounds for seeking a review was on the basis of the landlord's failure to notify the tenant(s) of the hearing, thus causing the tenant(s) to fail to attend the hearing. Since the hearing was conducted on an *ex parte* basis without any participatory hearing, there was no participatory hearing for either of the parties to have missed. The RTB's direct request process does not include a participatory hearing. Consequently, I find that even if the tenant had applied for and received an extension of time to apply for review, the application for review could not be successful on the grounds of them being unable to attend the hearing of the landlord's application.

While the applicants did not specifically identify fraud as one of the grounds they were seeking for review of the original decision, I have also considered the statements they made in their application and in the attachments to determine if the tenants have grounds for seeking a review on the basis of fraud. I find their "evidence" of fraud

unclear, most times reducing to their claim that the landlord submitted incorrect written evidence. Many of the applicants' comments were handwritten notes in the margins of letters or documents, the credibility and relevancy of which is at question. They provided a great deal of comments and observations regarding many different aspects of their disagreement with how the landlord conducted his duties as landlord and about his alleged failures to address their concerns about another tenancy in this rental property. I find the applicant's statements unclear and for the most part irrelevant to the issues that were before the Arbitrator making the original decision. Other than the tenant's claim that the parties entered into a series of oral agreements with the landlord, I find little real written evidence to substantiate their allegations. If they believe that they should have been entitled to some form of rent reduction due their loss in value of their tenancy, the *Act* provides a process whereby they could apply for dispute resolution regarding such claims against the landlord. The review process is not established to provide a party an opportunity to raise a whole host of seemingly irrelevant issues that have no bearing on the application for dispute resolution properly before the Arbitrator at the original hearing. I find little relevance to the tenant's claim that the decision was based on fraud and also find that the applicants have been very unclear as to their allegations in this regard.

I find that many of the attachments provided by the applicants for review reveal a disagreement with the merits of the original decision. Even if the applicants were not late in submitting the application for review, I find that the application for review discloses no basis for establishing that the original decision was based on fraud.

For the reasons outlined above, I confirm the original decision in this matter as the applicants have not filed their application within the time frame for doing so. I also find that there is no basis to obtaining a review of the original decision on the basis of the tenant's being unable to attend a non-participatory hearing or on the basis of fraud. I confirm the original decision and Orders in this matter.

#### Decision

The decision and Orders made on May 30, 2013 stand.

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: June 21, 2013

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Residential Tenancy Branch