



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC FF MNDC

Introduction

On May 14, 2013 Arbitrator XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. The hearing had been conducted on May 14, 2013.

That decision dismissed the tenant's Application. The tenant did not request an extension of time to apply for Review Consideration.

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 tenant submits in his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control.

Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the order of May 14, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 5 days after a copy of the decision or order is received by the party, if the decision relates to a notice to end tenancy for any reason other than the non-payment of rent.

From the decision of May 14, 2013 the issues before the Arbitrator were related to the landlord's notice to end tenancy for cause. As such, I find the decision and order the tenant is requesting a review on allows 5 days to file their Application for Review Consideration.

From the tenant's submission he received the May 14, 2013 order on June 1, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on June 3, 2013 (1 business day after receipt of the order). I find the tenant has filed his Application for Review Consideration within the required timelines.

The tenant has submitted documentary evidence to explain a medical condition that resulted in his inability to attend the hearing. The documentary evidence includes notations from the tenant's physician and pharmacist.

Based on this documentation, I accept the tenant was unable to attend the hearing for unexpected reasons that were beyond his control.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's copy of this decision. The tenant **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The order made on May 14, 2013 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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 04, 2013