



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This Application was filed by the tenants on August 26, 2013, seeking a Review Consideration of a Decision and Orders dated July 17, 2013, although the tenants incorrectly listed the Decision date as July 12, 2013. The tenants write in their Application that they received the Decision on August 5, 2013, by hand delivery from the landlords, and the orders were received on July 22, 2013. The Decision and Orders granted the landlords an order of possession and a monetary order through the Direct Request process.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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 tenants have applied on the first, second and third grounds.

Facts and Analysis

The first matter I must consider is whether the tenants have submitted their Review Application on time. The Application for Review Consideration states that an applicant **must** submit their application **within 2 days** of the date they receive the decision or order when the decision or order relates to an order of possession. The Application for Review Consideration states that an applicant **must** submit their application **within 15 days** of the date they receive the decision or order when the decision or order relates to **any** other part of the *Act*, which in this case includes a monetary order pursuant to section 67 of the *Act*. The timelines for applying for a Review Consideration are set out in section 80 of the *Act*.

The tenants indicate in their application that they received the decision on August 5, 2013. The last day the tenants were entitled to apply for a Review Consideration in relation to the **order of possession** would have been two days later on August 7, 2013, which was a Wednesday. The last day the tenants were entitled to apply for a Review Consideration in relation to the **monetary order** would have been 15 days later on August 20, 2013, which was a Tuesday. The tenants did not apply for a Review Consideration until August 26, 2013, which was a Monday.

The tenants requested an extension of time to make this application. In their Application, it clearly indicates to the Applicants “Time extensions may be granted only in exceptional circumstances, such as a natural disaster or a medical emergency.”

The tenants write in their Application the following in relation to their request for an extension of time to make this Application:

“Not able to Apply due to improper service
Did not receive in mail till past respond time
Hand served By Landlord at his home July 22nd for order Pg 6 & 7 only
Hand Delivered of Direct Request @ Home Aug 5th
Please Refer to Attached Documents”

[reproduced as written]

The tenants submitted two binders and six envelopes in evidence with their Review Application.

Decision

Based on the above and on a balance of probabilities, I find the following. The tenants write in their Application regarding their Application for an extension of time to make their Review Application:

“Not able to Apply due to improper service
 Did not receive in mail till past respond time
 Hand served By Landlord at his home July 22nd for order Pg 6 & 7 only
 Hand Delivered of Direct Request @ Home Aug 5th
 Please Refer to Attached Documents”

[reproduced as written]

The tenants acknowledge in their Application that they received the Decision on August 5, 2013. Therefore, **I find** it reasonable that the tenants could have applied for dispute resolution on August 6, 2013 or August 7, 2013, which would have been within the two day timeline to dispute the order of possession, or within fifteen days to dispute the monetary order. Based on the above, **I find** the tenants provided insufficient evidence to prove an exceptional circumstance that would justify an extension of time to make their Review Application. As a result, **I dismiss** the tenants request for an extension of time to make their Review Application due to insufficient evidence.

As indicated above, the tenants filed their Review Application on August 26, 2013 which is outside of the permitted timelines under section 80 of the *Act*. Therefore, **I dismiss** the tenants' application as they failed to apply for a Review within the permitted timelines under section 80 of the *Act*.

As a result, I do not find it necessary to consider the merits of the first, second and third grounds given that the application of the tenants was submitted beyond the permitted timelines under section 80 of the *Act*.

For these reasons, **I dismiss** the Application of the tenants.

The decision and orders made on July 17, 2013, **stand and remain in full force and effect**.

I note that the tenants have included a second file number in their Application, the file number of which has been referenced above. That decision relates to a May 28, 2013 decision which ultimately resulted in the landlords Direct Request application for dispute

resolution being dismissed with leave to reapply. Although the July 17, 2013 relates to a different 10 Day Notice, **I find** that the tenants failed to include the date in which they received the May 28, 2013 decision in their Review Application and as a result, **I dismiss** that portion of the tenants' application as they have failed to include relevant information which is required to determine if they filed within the timeline permitted under section 80 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: August 28, 2013

Residential Tenancy Branch