



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

On July 03, 2013 a hearing was conducted after the landlord filed an application for an Order of Possession, for a Monetary Order for unpaid rent and to keep the security deposit. The tenants did not appear at the hearing and the Arbitrator granted an Order of Possession and a Monetary Order in favour of the landlord. The tenants have applied for a review of this Decision and Order.

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.

Issues

The applicants rely on sections 79(2)(a)(b) and (c) of the *Residential Tenancy Act* (the "Act"). That the party was unable to attend the hearing because of circumstances that could not be anticipated and were beyond the party's control. The party has new and relevant evidence that was not available at the time of the original hearing. The party has evidence that the arbitrator's decision or order was obtained by fraud.

Facts and Analysis

The decision is dated July 03, 2013. The tenants have submitted two conflicting statements about when they received a copy of the decision and Orders. On the Application for review consideration the tenants have stated they received the decision and order by mail on July 05, 2013 and in the tenants Statutory Declaration they have sworn that they received the Decision on or about July 10, 2013. Section 80(a) (ii) of the *Residential Tenancy Act* states:

A party must make an application for review of a decision or order of the director within whichever of the following periods applies:

- (a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to*
- (ii) a notice to end a tenancy under section 46*
[landlord's notice: non-payment of rent],

The tenants have submitted that they received the Decision and Orders on July 05, 2013 and the Decision on or about July 10, 2013. Whichever of these two dates the tenants did receive the Decision and Orders the tenants still only had two days in which to file their application for a review consideration. The tenants did not file their application for a review of that decision and Orders until July 23, 2013. The tenants have not requested more time to submit this application for review consideration or shown any exceptional circumstances why they filed this application late in accordance with s. 66 of the *Act* which states:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) *[starting proceedings]* or 81 (4) *[decision on application for review]*.

Consequently, I am unable to consider the tenants' application as it was not filed within two days of receiving the Decision or Order.

Decision

The tenants' application for review consideration is dismissed

The decision made on July 03, 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 *Residential Tenancy Act*.

Dated: August 08, 2013

Residential Tenancy Branch