



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR MNSD OPR

Introduction

On May 08, 2013 a hearing was conducted after receiving an application from the landlord. The Landlord had applied for an Order of Possession due to unpaid rent; for a Monetary Order for unpaid rent, a Monetary Order for money owed or compensation for damage or loss; and an Order to keep the security deposit. The Arbitrator granted an Order of Possession and a Monetary Order in favour of the landlord. The tenant has applied for a review of these Orders.

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 applicant relies on sections 79(2)(a) and (b) 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 applicant also requests an extension of time to apply for this review.

Facts and Analysis

Extension of Time to Apply For a Review

The decision and Orders are dated May 08, 2013 and an amended decision and Orders were made on July 08, 2013 to add a landlords name to the Decision and Orders. The tenant has submitted that the Order was issued on May 08, 2013 but has provided no information as to when the Order was received. The tenant has submitted that the Order was received when someone came to the door. 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 tenant has provided insufficient evidence to show on which date the order was received. I therefore find I cannot proceed with this application without this information as the tenant has in my opinion filed this application late and has failed to show any exceptional circumstances why she 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]*.

Even if I was to proceed with the application the tenant has applied for a Review Consideration based on the grounds of being **unable to attend the hearing**. However the Decision clearly shows that the tenant did attend the hearing.

The tenant has also applied on the grounds that the tenant has **New and Relevant Evidence**

Leave may be granted on this basis if the applicant can prove that:

- he has evidence that was not available at the time of the original hearing;
- the evidence is new,
- the evidence is relevant to the matter which is before the Arbitrator
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator

The tenant has provided receipts for rent payments made after the hearing date and show the rent was accepted for use and occupancy only. These receipts are therefore not relevant to the hearing that took place in May, 2013 and would not be considered new and relevant evidence and would not have had a material effect on the decision of the Arbitrator as the tenant did not pay these rent amounts until after the hearing.

Consequently, I am unable to consider the tenant's application.

Decision

The tenant's application for Review Consideration is dismissed

The Decision and Orders made on May 08, 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: September 06, 2013

Residential Tenancy Branch