



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: MNDC OPC

Introduction

On August 30, 2013, a hearing was conducted after the landlord filed an application for an Order of Possession for cause and for a Monetary Order for damage or loss. Both parties appeared at the hearing and the Arbitrator granted an Order of Possession and a Monetary Order in favour of the landlord. The tenant has applied for a review of the 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)(b) and (c) of the *Residential Tenancy Act* (the "Act"). That the party has new and relevant evidence that was not available at the time of the hearing and that the party has evidence that the arbitrator's decision or order was obtained by fraud. The applicant has also requested an extension of time to make this application.

Facts and Analysis

The decision and orders are dated August 30, 2013. The tenant has submitted that they received the Decision and Orders on September 05, 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 tenant did not file their application for a review of the Orders until September 10, 2013. The tenant has requested more time to submit this application for review consideration and has stated that he is 62 years old and lives on a rural farm and the bus is miles and the applicant does not have money for a ticket anyways. The applicant states he has to rely on the kindness of others for a ride. The applicants ride for September 09 had a child related problem and the applicant got to the office as fast as he could.

Section 66 of the *Act* 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]*.

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. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "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

Consequently, the tenant has not shown an exceptional reason why the tenant filed this application for a review of the Orders issued on August 30 late and I am unable to consider the tenant's application as it was not filed within two days of receiving the Orders.

Decision

The tenants' application for review consideration is dismissed

The decision made on August 30, 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 24, 2013

Residential Tenancy Branch