



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR OPR

Introduction

The Tenants have applied for a review of the Decision and Orders of a Dispute Resolution Officer dated October 1, 2013. The Decision and Orders granted an *Order of Possession and a Monetary Order to the Landlords*.

Preliminary Matter

The Tenants also applied for an extension of time to make their Application for Review Consideration ("Application"). The Tenants' Application indicates that they received the Order of Possession on October 4, 2013, in person, and that they have not yet received the Decision.

Section 80 of the Act requires a party to make an application for review **within 2 days after** a copy of the Decision or Order if the Decision or Order relates to an order of possession. When calculating the number of days, weekends are excluded. In this case, October 4 was a Friday and the Tenants made their Application on Tuesday, October 8, 2013. This falls within the time limit provided by Section 80 of the Act and therefore the Tenants do not require an extension of time to make their Application.

Issues

Does the Tenant's Application contain sufficient reasons to support grounds for a review?

Facts and Analysis

Division 2, Section 79(2) of 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 following 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 rely on all three grounds for review as indicated above.

In this case, the Decision and Orders were granted through the direct request process. There is no participatory hearing held in this process, rather it is a proceeding done by written application only, and the Dispute Resolution Officer was satisfied that the Tenants were served with Notice of the direct request proceedings in accordance with the provisions of the Act.

As this is a proceeding done by written application of the Landlords, there is no provision for the Tenants to provide documentary evidence. **The only ground for review of a Decision granted through the direct request process is fraud.**

It is important to note that the Tenants stated in their Application for Review that one of the Tenants made a payment to the Landlords on October 2, 2013, in the sum of \$635.00. However, the Order of Possession was granted based on a Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") that was issued on September 2, 2013, for \$575.00 that was due on September 1, 2013. **The Tenants do not allege that they did not receive the Notice. The Tenants made no allegation that they paid September's rent within 5 days after receipt of the Notice.** The payment made October 2, 2013, was made well after the 5 day period allowed under Section 46(4) of the Act.

If the Tenants made a payment of \$635.00 on October 2, 2013, it may satisfy the Monetary Order, however the Landlords are at liberty to enforce any unpaid balance as necessary.

Decision

The Tenants' Application for Review is dismissed.

The Decision and Orders made on October 2, 2013, stand.

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: October 11, 2013