



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ERP MNDC MNR OLC RP

Introduction

On October 1, 2013 Arbitrator XXXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to a monetary order and orders for the landlord to complete repairs and emergency repairs. The hearing had been conducted on October 1, 2013.

That decision dismissed the tenant's Application as the applicant tenant failed to attend the conference call hearing. The tenant requested an extension of time to apply for Review Consideration for medical reasons.

The tenant has submitted medical documentation confirming difficulties with memory due, in part, to chronic pain. The tenant submits that as a result he is only able to handle 1 task at a time. The tenant does not provide an explanation as how this impacted his inability to apply for review for 15 days.

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.

The tenant submits in his Application for Review Consideration that he was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond his control.

Issues

It must first be determined if the tenant has submitted his Application for Review Consideration within the legislated time frames required for reviews or if he is entitled to an extension.

If the tenant has submitted his Application within the required time frames or is entitled to an extension it must be decided whether he is entitled to have the decision of October 1, 2013 suspended with a new hearing granted because he has provided sufficient evidence to establish that he was unable to attend the hearing for unexpected reasons that were beyond his control.

Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 5 days after a copy of the decision or order is received by the party, if the decision to repairs or maintenance or services and facilities.

From the decision of October 1, 2013 the issues before the Arbitrator were related to the tenant's application for repairs and emergency repairs. As such, I find the decision the tenant is requesting a review on allowed 5 days to file his Application for Review Consideration.

From the tenant's submission he received the October 1, 2013 decision on October 2, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on October 16, 2013 (14 days after receipt of the decision). I find the tenant has failed filed his Application for Review Consideration within the required timelines.

Section 66 states the director may extend a limit established by the *Act* only in exceptional circumstances. Exceptional means, according to Residential Tenancy Policy Guideline 36, 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.

While I accept that the tenant's ability to focus on more than one task at a time for medical reasons he has not provided an explanation as to why it took him 14 days or 9 days beyond the required deadline to submit his Application for Review Consideration. As such, I find the tenant has failed to provide evidence of exceptional circumstances sufficient to warrant an extension of time to submit his Application.

Even if I were to find the tenant was entitled to an extension to submit his Application for Review Consideration he submits that he was unable to attend the hearing because he believed the hearing was scheduled for the following day he has not explained how he thought it was the next day when he had a copy of the Notice of Hearing documents that stipulated both the date and time of the hearing was well as the call in procedures.

Decision

For the above noted reasons, I dismiss the tenant's Application for Review Consideration.

The decision made on October 1, 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: October 22, 2013