



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.

Introduction

On October 02, 2013, a decision and orders were issued to the landlord in response to the landlord's application for an order of possession and a monetary order for unpaid rent in the amount of \$200.00. The tenant has applied for a review of this decision.

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 applicant relies on sections 79(2)(b) and (c) of the *Residential Tenancy Act* (the "Act"). Section 79(2) (b) provides that the director may grant leave for review if a party has new and relevant evidence that was not available at the time of the original hearing. Section 79(2)(c) provides that the director may grant leave for review if a party has evidence that the arbitrator's decision or order was obtained by fraud.

Issues

- Does the tenant have exceptional circumstances that prevented her from applying for a review within the two day time frame?
- Does the tenant have new and relevant evidence that was not available at the time of the hearing?
- Does the tenant have evidence that the Arbitrator's decision was obtained by fraud?

Facts and Analysis

This is an application for review filed on October 24, 2013 by the tenant for the review of a decision dated October 02, 2013 and received by the applicant for review, on October 19, 2013. The Act specifically provides a 2 day time-frame in which a party can apply for review with respect to an application of this nature. In this case, the applicant applied on the fifth day after having received the decision. The applicant has not applied for an extension of time to file the application for review.

Under section 66(1) of the Act, an extension of time to apply for review can only be granted where the applicant has established that there are exceptional circumstances. I find that the applicant has failed to apply for an extension of time and prove that exceptional circumstances prevented the tenant from filing for review in a timely manner. Accordingly, I dismiss this application for review.

The tenant states in her application for review that she held back \$200.00 from rent to pay the plumber. The tenant has provided a receipt as proof of payment. The Arbitrator reviewed all the documents and based the decision on the fact that the tenant did not dispute the notice to end tenancy and did not pay the outstanding rent. I find that even if grant the tenant an extension of time and even if I accept the tenant's receipt for plumbing, it will not change the decision. The decision was made based on the notice to end tenancy served on the tenant and sections 46 and 55 of the *Residential Tenancy Act*.

The applicant has failed to prove that she has new evidence that could change the arbitrator's decision and has failed to prove that the decision was obtained by fraud. Therefore, I find that the application for review on these grounds must fail.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on October 02, 2013 are confirmed.

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 31, 2013

Residential Tenancy Branch