



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

### Introduction

This is an application by the tenant for a review of a Review Decision rendered by an Arbitrator on September 27, 2013 (the Review Decision), with respect to an application for dispute resolution from the landlord. In his Review Consideration Decision of August 2, 2013, the Arbitrator had allowed the tenant's application for review of the original decision and Orders issued by another Arbitrator on July 12, 2013 (the original decision).

The Review Consideration Decision of August 2, 2013 granted the tenant's application for review and directed the tenant as follows:

*...A Notice of Hearing Document is attached for each party. **The Tenant is responsible for serving the Landlord with the Notice of Hearing and must provide to the Landlord copies of the relevant information and/or documents to which he may refer at the hearing.** The Tenant should be prepared to give evidence of service at the hearing.*

*Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing...*

In his September 27, 2013 Review Decision, the Arbitrator noted that the tenant did not attend the September 27, 2013 hearing. Notice of that hearing was mailed to the tenant's correct mailing address on September 20, 2013, after the tenant had encountered difficulty connecting with the original teleconference review hearing scheduled for September 16, 2013. In accordance with section 90 of the *Act*, the tenant was deemed to have received notice of the reschedule hearing five days after its mailing. The tenant did not attend the September 27, 2013 hearing. The Arbitrator noted in his September 27, 2013 decision that the landlord "obtained the hearing information directly from the Residential Tenancy Branch." Since the tenant did not attend the Review Hearing, the Arbitrator granted the landlord's application of June 12, 2013 and reinstated the July 12, 2013 decision and Orders.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

### Issues

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.

In this case, the tenant applied for a review of the Review Decision of September 27, 2013 on the basis of being unable to attend the review hearing of September 27, 2013. Although the tenant also checked the box on the application for review form signifying that he was also applying for review on the basis of fraud, he did not fill in any of that portion of the form with respect to the alleged fraud. Since he has not done so, I do not consider the tenant as having submitted any actual application for review on the basis of fraud. The tenant also requested an extension of time to make his application.

### Facts and Analysis – Extension of Time

On his application for review, the tenant stated that he was unsure if the September 27, 2013 Review Decision was sent, but also confirmed that he received it by mail on an unspecified date. In the explanation he provided with respect to his request for an extension, the tenant stated that he “was not informed of the RTB Hearing dated Sept. 16, 2013” and that the September 27<sup>th</sup> hearing went ahead without him, leading to his eviction. However, his information about being unaware of the September 16, 2013 hearing is at odds with a call that he placed to the RTB on September 16, 2013 that he had attempted to connect with the teleconference hearing scheduled for September 16, 2013, but could not successfully connect with that hearing. His inability to connect with

the September 16, 2013 hearing prompted the RTB to reschedule the review hearing to September 27, 2013. The tenant provided no explanation as to why he delayed seeking a review of this matter until October 18, 2013, well after the Review Decision was mailed to him.

The *Act* states that an applicant for review of a decision involving an Order of Possession, as is the case in this instance, has 2 days within which to make an application for Review of this type of decision.

The *Act* provides that an Arbitrator may extend or modify a time limit established by the *Act* only in **exceptional circumstances**.

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. The party putting forward the "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

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an Arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not willfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit

- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances.

The only explanation as to why the tenant may have delayed filing his application was his claim that he had a different address for receiving mail. While he identified this mailing address as the reason why he was unable to attend the review hearing, he continued to show the dispute address for the service of documents in his most recent application for review. I also note that he also identified the dispute address as his address for the service of documents in his previous successful application for review.

Despite the above inaccurate information contained in the tenant's own applications for review, the Residential Tenancy Branch (the RTB) did correctly send the Review Consideration Decision of August 2, 2013 and the August 8, 2013 Notice of a Dispute Resolution Hearing scheduled for September 16, 2013 to the tenant at the mailing address he provided to the RTB. Based on this information and in accordance with section 90 of the *Act*, I find that the tenant was deemed served with notice of the September 16, 2013 hearing date on August 13, 2013, five days after its mailing by the RTB. I also note that it was the tenant's responsibility to inform the landlord of the dispute resolution hearing scheduled for September 16, 2013. There is undisputed evidence that the tenant did not do so.

In accordance with section 90 of the *Act*, I find that the tenant was deemed to have received the Review Decision of September 27, 2013 well in advance of October 18, 2013, the date when he eventually submitted his application for review.

Based on the evidence supplied by the tenant, I find that the tenant failed to make an application for review within the proper time limits and failed to provide any adequate explanation as to why he delayed filing his application. I find that the tenant has not proven that exceptional circumstances as described above existed such that he was prevented from filing an Application for Review within the proper time limits. I therefore dismiss the tenant's application because he did not file his application for review within the statutory time limits for doing so.

I also note that the tenant's application for a review on the basis of being unable to attend the September 27, 2013 hearing does not disclose sufficient evidence of a ground for review and does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the Arbitrator should be set aside or varied.

The Review Decision is therefore confirmed.

Decision

The Review Decision made on September 27, 2013 stands. This review decision reinstated the original decision issued on July 12, 2013, which remains in full force and effect.

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 28, 2013