



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC MNDC OLC

Introduction

On November 7, 2013 Arbitrator XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause and for a monetary order for compensation. The hearing had been conducted on November 7, 2013.

That decision dismissed the tenant's Application in its entirety and granted the landlord an order of possession. The tenant requested an extension of time to apply for Review Consideration.

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 is entitled to an extension of time.

If the tenant has submitted his Application within the required time frames it must be decided whether he is entitled to have the decision and order of November 7, 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 relates to, among other things, a notice to end tenancy for any reason other than non-payment of rent.

From the decision of November 7, 2013 the issues before the Arbitrator were related to the landlord's notice to end tenancy for cause and the tenant's monetary claim. As such, I find the decision and order 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 November 7, 2013 decision and order on November 15, 2013 and filed his Application for Review Consideration with the Residential Tenancy Branch on November 18, 2013 (3 days after receipt of the decision and order). I find the tenant has filed his Application for Review Consideration within the required timelines. As such, I find no need to grant the tenant additional time to apply for Review Consideration.

While the tenant has completed the questions for all three grounds for Review (unable to attend; new and relevant evidence; and fraud) the tenant has only applied for Review on the ground that he was unable to attend the hearing for reasons that were unanticipated and beyond his control.

The tenant submits that he was unable to attend the hearing because his phone screen was broken and he tried several time to "punch in #". He submits that he tried the number 3 times and was not able to connect. He also notes that he was on hold for 45 minutes to talk to someone regarding the matter. He does not state whether or not he did speak to anyone at the Residential Tenancy Branch and a review of his file shows no record that he spoke to anyone on the day of the hearing or any other time until he submitted his Application for Review Consideration on November 18, 2013.

As the tenant specifically identified in his Application for Review Consideration that it was the # key that he difficulty using and since that key is rarely used in day to day usage of a phone but is required to call in to Dispute Resolution hearings I find this was an unanticipated cause that prevented the tenant from attending the hearing.

In addition, as his Application for Dispute Resolution was dismissed because he failed to attend the hearing and no merits were heard I find that the tenant has provided sufficient evidence to establish that a new decision on the merits may vary or set aside the original decision.

Decision

For the reasons noted above, I find the tenant has established sufficient grounds for a new hearing on these matters. Details of the new hearing are included with the tenant's

copy of this decision. The tenant **must serve the landlord within 3 days** of receiving this decision with a copy of this decision and the Notice of Hearing documents.

The decision made on November 7, 2013 is suspended until such time as the new hearing has been completed and a decision is given to the parties, in accordance with Section 81(3).

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: November 22, 2013