



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNR DRI

Introduction

The original dispute resolution hearing on the application of the tenant was held on October 28, 2013, and a Decision and Order of possession for the rental unit was issued on October 28, 2013, dismissing the tenant's application disputing an additional rent increase and seeking an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord.

This is a request by the tenant for a review consideration of that original Decision and Order.

The tenant applied for a review consideration on the grounds that she was unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control, and that she has new and relevant evidence that was not available at the time of the original hearing, pursuant to Section 79(2) under the *Residential Tenancy Act*

Additionally, the tenant filed for an extension of time to make the application for review consideration.

Issues

Has the applicant for review provided sufficient evidence to support the indicated grounds for review?

Has the tenant established an entitlement for an extension of time to make the application for review consideration?

Facts and Background

The tenant did not attend the hearing on her original application for dispute resolution and in her absence, the landlord was granted an order of possession for the rental unit. The original Arbitrator stated that the tenant failed to make a timely application to dispute the 10 Day Notice, which was at issue in the tenant's application or other Notices issued to the tenant, and therefore the tenant was conclusively presumed to have accepted the end of the tenancy.

Unable to attend the hearing due to circumstances that could not be anticipated and were beyond her control-

The tenant in her application for review consideration submitted that the “lady” at the front desk did not inform her that she was required to phone into the telephone conference call hearing and that she was confused due to the time change from the past weekend.

New and relevant evidence that was not available at the time of the original hearing-

In support of this ground, the tenant submitted a letter dated July 18, 2013.

An extension of time to file the application for review consideration-

The tenant claimed that the weather and a broken elbow, which occurred on December 4, 2013, prevented her from filing her application for review consideration within the 2 days allowed under the Act.

Analysis on Review

An extension of time to file the application for review consideration-

Under section 66(1) of the Act, an extension of time can only be granted where the applicant has established that there are exceptional circumstances. In the case before me, the tenant was required to file her application for review consideration within 2 days of the day she received it as the original Decision pertained to an order of possession for the landlord. The tenant submitted that she received the Decision on October 31, 2013, a Thursday, and was therefore required to file her application by Monday, November 4, 2013, the next available business day.

I find that the tenant has failed to prove that exceptional circumstances prevented her from filing for review consideration within the prescribed time limit as noted above, November 4. The tenant submits that a broken elbow on December 4 and the recent bad weather prevented her from filing her application for review consideration without further explanation. Therefore the tenant has failed to prove that were exceptional circumstances and could have been anticipated. I therefore dismiss the tenant's application for review consideration.

Even had I not dismissed the tenant's application for not being timely filed, I would still make the decision to dismiss her application for the following reasons.

The original Arbitrator determined that the tenant had not made her application to dispute the 10 Day Notice within the required time frame of 5 days within receipt of the Notice and the tenant was therefore conclusively presumed to have accepted the end of the tenancy.

I therefore find, pursuant to Section 81(1)(b)(iii) of the Act, the tenant's application discloses no basis on which, even if the submissions in the application were accepted, the decision or order of the director should be set aside or varied.

Decision

Due to the above, I dismiss the tenant's application for review consideration and confirm the original Decision and Order of October 28, 2013, dismissing the tenant's application for dispute resolution and granting the landlord an order of possession for the rental unit.

The Decision and Order made on October 28, 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: December 12, 2013