



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

On October 21, 2013, a hearing was conducted to resolve a dispute between these two parties. The tenant had applied for a monetary order for the return of double the security deposit, for compensation and for the recovery of the filing fee. The Arbitrator granted the tenant's application. The landlord 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 applied for an extension of time to file this application for review. The applicant also 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 applicant have exceptional circumstances that prevented her from applying for a review within the 15 day time frame? Does the applicant have new and relevant evidence that was not available at the time of the hearing and evidence that the Arbitrator's decision was obtained by fraud?

Facts and Analysis

This is an application for review filed on December 10, 2013 by the landlord for the review of a Decision dated October 13, 2013 and received by the landlord on November 11, 2013. The landlord applied for a review 29 days after having received the decision. The *Act* specifically provides a 15 day time-frame in which a party can apply for review with respect to an application of this nature.

The applicant stated that the reason she was unable to apply for review within the required time frame was that she spent a lot of time trying "*to dig up evidence, contact old workers who had helped with the repairs, contact the Residential Tenancy Branch Office and seek legal advice.*" 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** (Sec. 66).

In this matter, the word *exceptional* implies that the reasons for failing to apply for a Review in the time required are very strong and compelling. On reflection of the reasons advanced by the landlord, I find that the landlord has failed to prove that *exceptional circumstances* prevented her from filing for Review within the legislated time limit and accordingly I dismiss the application. The application has not been considered on its merits. The landlord is at liberty to apply for the cost of repairs to the rental unit.

Decision

The decision made on October 21, 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: December 18, 2013

Residential Tenancy Branch