



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lewis Apartments
and [tenant name suppressed to protect privacy]

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR MNSD

This is an application by the tenant to review the decision of an Arbitrator dated April 18, 2013 relating to the above-noted rental unit. The decision under review granted the landlord a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

I refer to section 79(2) of the Act which provides that a decision or order of the director may be reviewed only on one or more of the following grounds:

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 applied for a review citing the second and third grounds for review. In her application for review the tenant said that she received the decision and order on October 31, 2013. She said in her application that the decision was issued on October 23, 2013, whereas it was actually issued on April 18, 2013. The tenant submitted her application for review on December 3, 2013. She requested an extension of time to apply for review. In the decision and order under review, the landlord was granted a monetary order. Section 80 of the *Residential Tenancy Act* provides that a party must make an application for review of a decision or order within fifteen days after the party receives the decision or order if it relates to such a claim. The tenant claimed in her application that she received the decision on October 31, 2013. Her application was made on December 3rd, which was more than 30 days after the date that the tenant said that she received the decision. The tenant attended and gave evidence at the hearing conducted by conference call on April 18, 2013. She did not provide any explanation with regard to her failure to obtain the decision and order until more than six months after the hearing was held and the decision issued.

With respect to the tenant's requested for an extension of time to make the application, contained the following statement:

(name of tenant) is currently homeless with no access to phone or mail. She also struggles with literacy issues and requires the assistance of an advocate to understand information received from the RTB, this requires an appointment and has delayed her request for a review. (name of tenant) has worked hard to obtain written verification that proves the landlord made a false claim for December rent, as per attached document that show rent direct from the Ministry of Social Development for this month.

The Residential Tenancy policy guideline with respect to extending time periods comments as follows:

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² provide that an arbitrator may extend or modify a time limit established by these Acts **only in exceptional circumstances**. An arbitrator may not extend the time limit to apply for arbitration beyond the effective date of a Notice to End a Tenancy and may not extend the time within rent must be paid without the consent of the landlord.

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. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "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 wilfully 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 tenant has applied for review on the grounds of new and relevant evidence and on the ground that the decision was obtained by fraud. Both of these grounds require the provision of new and relevant evidence that was not available at the time of the original hearing to support the grounds for review alleged. The tenant has not provided any new and relevant evidence that was not available at the time of the original hearing. The tenant made the same argument as to payment of rent at the original hearing on April 18th and it was rejected.

The tenant's reason for failing to apply within the applicable time frame does not amount to exceptional circumstances. As noted in the guideline, a lack of knowledge of the applicable law or procedure is merely an excuse, not an exceptional circumstance. I deny the tenant's request for an extension of time to make her review application. The review application is dismissed.

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 09, 2013

Residential Tenancy Branch