



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: ET

This is an application by the tenant to review the decision of an Arbitrator dated October 23, 2013 relating to the above-noted rental unit. The decision under review granted the landlord an order for possession pursuant to an application for an early end to the tenancy.

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 all three grounds for review. In his application for review the tenant said that he received the decision and order on November 1, 2013. The tenant submitted an incomplete form of Application for Review on November 10, 2013. The application was rejected and the tenant was advised that he would have to re-apply. The tenant filed his application for review on December 2, 2013. He then filed what he described as an Amended Application for Review Consideration on December 9, 2013. He requested an extension of time to apply for review. In the decision and order under review, the landlord was an order for possession. Section 80 of the *Residential Tenancy Act* provides that a party must make an application for review of a decision or order within two days after the party receives the decision or order if it relates to an order for possession under section 55 of the Act. The tenant's application was made on December 2nd, which was more than 30 days after the date that the tenant said that he received the decision.

With respect to the tenant's request for an extension of time to make the application, he made the following statement in his application:

ALL OF MY BELONGINGS ARE STILL IN FRONT OF THE HOUSE AND I HAVE MULTIPLE MEDICAL ISSUES.

il have to access to all my medical devices, medications and all moiters of BP/heart/etc

I have no furniture to put on any temp.place, as damage had to assessed to write off items not suitable for human use

I STILL LIVE IN A HOTEL and my son funds are running out (reproduced as written)

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 did not submit any documentary evidence to support his contention that he was prevented from filing his application for review in time due to medical problems.

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 his 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 10, 2013

Residential Tenancy Branch