



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Review Consideration Decision

Dispute Codes: FF MNDC MNR OPR

Introduction

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 and could not have been obtained through due diligence.
3. A party has evidence that the director's decision or order was obtained by fraud.

This is an application for review consideration by the tenant with respect to a hearing held on December 10, 2013 to hear an application for dispute resolution submitted by the landlord. The December 10, 2013 hearing related to a request for an Order of Possession in relation to an undisputed 10-Day Notice to End Tenancy for Unpaid Rent and the landlord was granted an Order of Possession effective December 31, 2013.

The tenant did not appear at the hearing. The landlord, who did attend, was granted an order of possession.

The tenant is now asking for the decision to be reviewed. The tenant made this application for Review Consideration of the decision on the basis that the tenant was prevented from appearing at the hearing through circumstances that could not be anticipated and were beyond the tenant's control.

Request for Extension of Time to Apply

The tenant is also requesting an extension of time to make the application for Review consideration.

Although the tenant indicated by signature on the form that the Request for Review Consideration application was made on December 12, 2013, other data on the same form indicated that the tenant did not receive the original hearing decision until December 20, 2013. In addition, the tenant's application for a fee waiver for the Review

application was not signed by the tenant until December 23, 2013. Records verify that the tenant's application for Review Consideration was processed by Residential Tenancy Branch on December 23, 2013.

Section 80(a) of the Act requires that the party must make their application for review **within 2 days** after a copy of the decision or order has been received by the party, when the matter that is the subject of a Request for Review Consideration, relates to an application regarding a Notice to End Tenancy under section 46 of the Act or an Order of Possession under section 55 of the Act.

If I accept the tenant's claim that they received the December 10, 2013 decision on December 20, 2013, I find that the application was made slightly beyond the two-day deadline.

Section 66 of the Act does permit a Dispute Resolution Officer to grant an extension in exceptional circumstances. What may constitute "*exceptional circumstances*" is discussed in the Residential Tenancy Policy Guideline, where it indicates that the word "*exceptional*" means that an ordinary reason given by a party for not complying with a time limit, will not suffice to allow an arbitrator to extend that time limit.

In this case, I determined that I will grant the tenant's request for an extension and I will consider the merits of the tenant's request for Review Consideration.

Issue(s) to be Decided

- Was the tenant unable to attend the hearing due to circumstances that could not be anticipated and were beyond the tenant's control?

Background and Evidence

In the tenant's Application for Review Consideration, the tenant indicated that neither co-tenant was able to attend the hearing on December 10, 2013 as the tenant's phone had been disconnected. The tenant also indicated that he had been tied up due to the death of his father.

The tenant submitted documentation verifying that the tenant's phone had been disconnected on November 27, 2013 due to payment arrears that had apparently accrued over several months, reaching a total of \$1,333.27.

I find that, although this development may be seen by the tenant as an extraordinary circumstance, the loss of use of the tenant's phone does not fit the definition as an event that could not be anticipated. I find that the tenant's own evidence confirms that they had ample warning that they could anticipate the possible loss of phone services.

In addition to the above, I find that the tenant had almost 2 weeks after the phone disconnection date to make alternate arrangements to use another phone to participate in the December 10, 2013 hearing.

In regard to the second reason given for missing the hearing, I find that no evidence was submitted with respect to the alleged death in the family confirming the date it occurred.

In any case, even if an emergency situation or extraordinary circumstance was created by the fact that one of these co-tenants suffered the tragic loss of his father, I find that the second tenant could likely have appeared at the hearing on December 10, 2013.

In addition to the above, I find that there was also no indication that either co-tenant had ever requested an adjournment of the proceedings.

The burden of proof is on the parties requesting Review Consideration to prove that the criteria justifying a review of the original decision has been met under the Act. Given the evidence before me, I find that the tenant has not met the required burden of proof to justify a review hearing.

Section 81(1) of the Act states that the director may dismiss or refuse to consider the application, if the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely, if the application does not disclose sufficient evidence of a ground for the review, if the 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, or if the application is frivolous or an abuse of process.

Pursuant to Section 81(b) (ii) of the Residential Tenancy Act, I must dismiss the application for review on the basis that it does not demonstrate that the evidence contained in this Application would meet the criteria for granting a review under the ground cited.

There is no valid basis to support that reconsideration is warranted based on the tenant being unable to attend the hearing due to circumstances beyond the tenant's control. Accordingly, I hereby dismiss this application without leave and the decision and orders issued on December 10, 2013 stand.

CONCLUSION

The tenant's application for Review Consideration was not successful and the decision and orders issued on December 10, 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: January 02, 2014

Residential Tenancy Branch