



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNR OPR

Introduction

This is an application by the tenants for a review of a decision rendered by an Arbitrator on January 17, 2014 (the original decision), with respect to an application for dispute resolution from the landlords for an Order of Possession for unpaid rent, and a monetary order.

An Arbitrator may dismiss or refuse to consider an application for review for one or more of the following reasons:

- the application does not give full particulars of the issues submitted for review or of the evidence on which the applicant intends to rely;
- the application does not disclose sufficient evidence of a ground for review;
- the application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the arbitrator should be set aside or varied;
- or
- the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

Issues

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.

In this case, the tenants applied for a review of the original decision on the basis that they were unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control, the first of the grounds outline above.

Facts and Analysis

Although the tenants did not request an extension of time to file their application for review, an extension would be necessary as they submitted their application for review beyond the 2 day time limit established under section 80(a)(ii) of the *Act*. In the application for review, the tenants stated that they received the original decision posted on their door on January 23, 2014. The application for review dated January 28, 2014 was also received that day by the Residential Tenancy Branch (the RTB). The tenants provided no explanation as to why it took them more than the two days allowed under section 80(a)(ii) of the *Act* to apply for a review of the original decision.

However, the *Act* allows an arbitrator to extend time limits in 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. The party putting forward the "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.

In this case, the tenants did not apply for an extension of time to file their application for review and provided no explanation for their delay in doing so. As I find no exceptional circumstances that enable me to grant an extension of time for this application for review, I therefore dismiss the application for leave to review. I confirm the decision and Orders of January 17, 2014.

In coming to this finding, I also note that I have reviewed the tenants' application and find that it does not disclose sufficient evidence of a ground for review. The tenants' only explanation for why they did not attend the original hearing was that they "had a family custody hearing that was not planned and did not receive the arbitration package." They provided no supporting documentation regarding this family custody hearing.

I also note that the Arbitrator stated in the original decision that the landlord gave sworn testimony that the landlord sent both tenants copies of the landlord's dispute resolution hearing package by registered mail on January 2, 2014. The Arbitrator also stated that the landlord gave the Canada Post Customer Receipt Tracking numbers to confirm the registered mailing of these packages. In accordance with sections 89 and 90 of the *Act*, these packages were deemed served to the tenants on January 7, 2014, the fifth day after their mailing.

I also find that the tenants' application discloses no basis on which, even if the submission in the application were accepted, the decision or order of the original arbitrator should be set aside or varied. Although the tenants maintained in their application that they had "proof of monies paid and evidence of an unrightful entry to suite," they did not attach any such proof of payments made with their application. Whether or not there was, as the tenants claimed, an unauthorized entry to their rental premises, the *Act* still requires tenants to pay their rent when it is due.

The original decision and Orders are confirmed.

Decision

The decision made on January 17, 2014 stands and the Order of Possession and monetary Order issued on that date remains in force and effect.

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 31, 2014

Residential Tenancy Branch