



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD

Introduction

This is an application by the landlord for a review of a decision rendered by an Arbitrator on December 12, 2013 (the original decision), with respect to an application for dispute resolution from the tenant for a monetary order, including return of double the security deposit.

In the Introduction to the original decision, the Arbitrator provided the following explanation for why she also considered the landlord's claim for damages in her decision:

...The landlord had filed evidence in support of a claim for damages against the security deposit but did not made (sic in original) a formal application for dispute resolution for a monetary order. Both parties expressed a desired to have all issues between them resolve at this hearing. Accordingly, I heard evidence and will render a decision on the landlord's claim for damages as well as the tenant's claim for return of the security deposit...

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* establishes that 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 landlord applied for a review of the original decision on the basis of there being new and relevant evidence that was not available at the time of the original hearing on November 14, 2013, the second of the grounds outlined above.

Facts and Analysis

Although the landlord did not request an extension of time to file her application for review, an extension would be necessary as she submitted her application for review beyond the 15 day time limit established under section 80(c) of the *Act*. In the application for review, the applicant/landlord stated that she received the original decision on December 24, 2013. The application for review is dated January 13, 2014 and was received by the Residential Tenancy Branch (the RTB) on January 14, 2014.

In her application, the landlord stated the following:

...Trying to find legal council over the Christmas holidays was very difficult as most offices close over the holidays with vacation time off. Jan 13 2014 at 11:00 am we finally received legal council as per attached receipt copy...

(as in original)

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 landlord did not apply for an extension of time to file her application for review. The sole explanation she provided in her application for her delay in filing her application was the difficulty she had in obtaining legal advice during the winter holiday period.

I could accept that some delay might be permissible if the landlord had met with legal counsel to obtain advice shortly after the beginning of the New Year. However, I do not accept that the landlord could not obtain any legal advice with respect to her circumstances until January 13, 2014, significantly beyond the 15 day time period for filing an application for review. I also note that the information obtained by the landlord that gave rise to her application for review on the basis of new and relevant evidence (i.e., newly noticed damage to the outside basement door) was not obtained by her from an independent contractor until January 11, 2014, again beyond the 15-day time period for filing an application. In her application for review, the landlord stated that it was difficult to get someone to conduct this inspection during the winter holidays. However, I also note that the landlord obtained possession of the rental unit in late August 2013, many months before the winter holidays of December 2013. I find that the landlord

would have had any reason to have sought legal advice during the winter holidays until after the 15 day time period for applying for review had already expired. As this was the landlord's explanation for her delay in filing her application, I therefore dismiss the application for leave to review as I find that there were no exceptional circumstances that enable me to grant an extension of time for this application for review. I confirm the decision and Order of December 12, 2013.

In coming to this finding, I also note that the landlord's 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. The landlord's application states that "we did not notice the amount of damage" that formed the basis for her application for review on the basis of new and relevant evidence. In this regard, I note that this tenancy ended on August 26, 2013, almost 2 ½ months before this hearing occurred. At the November 14, 2013 hearing, the landlord specifically requested that her claim for damages be included in the matters considered by the original Arbitrator. This request was agreed to by both parties as they both wished to have the November 14, 2013 hearing resolve all issues arising out of the tenancy. I find that the landlord bears responsibility for failing to notice damage that had arisen months before the original hearing. I also find that the landlord bears responsibility for asking the original Arbitrator to include a consideration of the landlord's claim for damages as part of the hearing of November 14, 2013. I find that her subsequent discovery of additional damage that she maintained was the tenant's responsibility months after this alleged damage had occurred would not have led to a different result to the decision issued by the original Arbitrator. I also note that the landlord has not supplied any evidence that she has actually incurred any extra losses. Rather, it would appear that she has a new set of estimates from an independent contractor. The landlord has not supplied any actual receipts of any extra expenses she has incurred as a result of the alleged newly discovered damage.

Decision

The decision made on December 12, 2013 stands and the 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 30, 2014

Residential Tenancy Branch