



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Introduction

This Application was filed by the tenant on May 12, 2014, seeking a Review Consideration of the Decision and Order which were dated December 19, 2013, however the tenant, indicated the Decision and Orders were both issued and received on December 19, 2014, which is clearly an error on the part of the tenant as December of 2014 is just over seven months away. In addition, the tenant dated his Application for Review Consideration 13/06/14, which was also an error as the Residential Tenancy Branch (the "RTB") date stamp clearly indicates May 12, 2014 and June 13, 2014 is still over one month away. Therefore, in the interests of fairness, I have considered the date of application to be May 12, 2014, the day of the RTB date stamp, and that the Decision and Order were issued and received on December 19, 2013, as the tenant wrote that he received the Decision and Order via the Arbitrator on the telephone.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of a 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.

The tenant has applied on the third ground and for an extension of time to make an application for Review Consideration.

Issues

- Has the tenant provided sufficient evidence to support an extension of time to make this Application?
- Has the tenant provided sufficient evidence that the director's decision was obtained by fraud?

Facts and Analysis

I will first determine if the tenant provided sufficient evidence to support an extension of time to apply for this Application. Section 80 of the Act states:

Time limit to apply for review

80 A party must make an application for review of a decision or order of the director within whichever of the following periods applies:

(a) within 2 days after a copy of the decision or order is received by the party, if the decision or order relates to

(i) the unreasonable withholding of consent, contrary to section 34 (2) *[assignment and subletting]*, by a landlord to an assignment or subletting,

(ii) a notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, or

(iii) an order of possession under section 54 *[order of possession for the tenant]*, 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]*;

(b) within 5 days after a copy of the decision or order is received by the party, if the decision or order relates to

(i) repairs or maintenance under section 32 *[obligations to repair and maintain]*,

(ii) services or facilities under section 27 *[terminating or restricting services or facilities]*, or

(iii) a notice to end a tenancy agreement other than under section 46 *[landlord's notice: non-payment of rent]*;

(c) within 15 days after a copy of the decision or order is received by the party, for a matter not referred to in paragraph (a) or (b).

The tenant writes in his request for an extension of time to apply for a Review Consideration:

"I was incarcerated during the phone arbitration hearing, and then again I was incarcerated until May 08, 2014. I was at VIRCC/Wilkinson Rd. Jail + NCC/Nanaimo Correctional Center."

[reproduced as written]

The tenant did not submit evidence to support that he was in custody between the date of the Decision dated December 19, 2013 and May 8, 2014, as claimed. Pursuant to section 80 of the *Act*, I find the tenant had 15 days from the date of the December 19, 2013, the date the tenant received the Decision, to file this Application, which would have been January 3, 2014. The tenant did not file his Application until May 12, 2014. I dismiss the tenant's request to for an extension of time to make this Application, due to insufficient evidence.

As the tenant's application for an extension of time to make this Application has been dismissed due to insufficient evidence, the tenant's application for Review Consideration is dismissed in full.

I note that although the tenant has applied on the third ground, which alleges that the decision or order was obtained by fraud, in order to be successful on the third ground for Review, the tenant must provide sufficient evidence to support, on the balance of probabilities, that the director's decision or order was obtained by fraud. The tenant failed to submit documentary evidence to support his allegation that the decision or order was based on fraud. The fact that the tenant disagrees with the conclusion reached by the Arbitrator does not amount to fraud. Therefore, the tenant's application on the third ground would have been dismissed had he submitted in Application in accordance with the timelines defined in section 80 of the *Act*, which the tenant failed to do.

The original Decision and Order dated December 19, 2013 **stand and remain in full force and effect.**

Decision

The tenant's request for an extension of time to apply for a Review Consideration has been dismissed, due to insufficient evidence.

The original Decision and Order dated December 19, 2013 stand and remain in full force and effect.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 12, 2014

Residential Tenancy Branch