Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

Introduction
This is an application by the tenant for a review of a decision rendered by an Arbitrator on March 22, 2013 (the original decision), with respect to an application for dispute resolution from the tenant.

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;
- 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.

The tenant applied for review on the basis of new and relevant evidence, the second of the grounds outlined above.

Although the tenant did not apply for an extension of time to apply for her review, she noted on her application that she received the original March 22, 2013 decision on April

2, 2013. The Residential Tenancy Branch (RTB) did not receive the tenant's application for review until April 5, 2013, the third day after she received the original decision. As outlined in the RTB's Application for Review Consideration Form (the Form), the *Act* required that she submit her application for review within 2 days of receiving the original decision as this application involves an Order of Possession granted to the landlord. Based on her own written evidence, the tenant did not comply with this deadline and would require an extension of time to apply for a review. I have considered whether the tenant qualifies for an extension of time to apply for her review.

Facts and Analysis- Extension of Time Request

The *Act* states that an applicant for review of a decision or order relating to an Order of Possession issued to a landlord has two days within which to make an application for review. Although the tenant provided no explanation as to why she did not apply for a review of this matter within two days of receiving the original decision and Order, she did note in her letter that she has a series of complex psychiatric conditions and physical ailments. She noted that these conditions make it difficult for her "to remember things, gather her thoughts, function on a day-to-day basis, and therefore difficult for her to gather then necessary evidence to prove her case in the Dispute Resolution process." She provided a January 2012 letter from a doctor who attested to her complex psychiatric conditions and confirming that she attends for treatment twice each week. He also noted that the stress of eviction has made it more difficult for her to follow her treatment regimen.

The *Act* provides that an Arbitrator may extend or modify a time limit established by the *Act* only 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 Aribtrator 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.

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 willfully 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; and
- the party has brought the application as soon as practical under the circumstances.

Based on the evidence supplied by the tenants, I find that the tenant failed to make an application for review within the proper time limits. However, based on her statement and the statement provided by her doctor, I accept that someone in her state of stress might require the extra time she took to submit her application for review. I am willing to accept that exceptional circumstances as described above existed such that the tenant was unable to file an Application for Review within the proper time limits. In making this determination, I note that the tenant dated her application as April 4, 2013, and submitted her application to the RTB the following day. By her account, she suffered a “severe meltdown” on April 4, 2013, which likely led to the delay in submitting her application for review.

Facts and Analysis –New and Relevant Evidence

Leave may be granted on this basis if the applicant can prove that:

- he or she has evidence that was not available at the time of the original arbitration hearing;
- the evidence is new;
- the evidence is relevant to the matter which is before the Arbitrator;
- the evidence is credible, and
- the evidence would have had a material effect on the decision of the Arbitrator.

Only when the applicant has evidence which meets **all** five criteria will a review be granted on this ground.

It is up to a party to prepare for a dispute resolution hearing as fully as possible. Parties should collect and supply all relevant evidence at the dispute resolution hearing. "Evidence" refers to any oral statement, document or thing that is introduced to prove or disprove a fact in a hearing. Letters, affidavits, receipts, records, videotapes, and photographs are examples of documents or things that can be entered into evidence.

Evidence which was in existence at the time of the original hearing, and which was not presented by the party, will not be accepted on this ground unless the applicant can show that he or she was not aware of the existence of the evidence and could not, through taking reasonable steps, have become aware of the evidence.

"New" evidence includes evidence that has come into existence since the dispute resolution hearing. It also includes evidence which the applicant could not have discovered with due diligence before the hearing. New evidence does not include evidence that could have been obtained before the hearing took place. Evidence that "would have had a material effect upon the decision of the Arbitrator" is such that if believed it could reasonably, when taken with the other evidence introduced at the hearing, be expected to have affected the result.

The tenant did not complete the portion of the Form in which she was asked to "List EACH item of new and relevant evidence and state WHY it was not available at the time of the hearing and HOW it is relevant." Rather, she responded "See attached letter."

In her April 4, 2013 attached letter, she referred to five items, which she maintained explained the nature of the new and relevant evidence "that was not available at the time of the hearing." I have reviewed each of these five items as follows.

1) As noted above, the tenant stated that she has complex psychiatric conditions and physical ailments that made it difficult for her to prepare for and make her case at the original hearing. She also noted that her son, who lives with her and also gave evidence at the original hearing, suffers from "anxiety, depression and panic attacks." She attached a previous letter from her doctor outlining her medical conditions.

   The four sentence letter from her doctor was dated January 16, 2012. Although there is no record of this letter having been entered into written evidence by the

tenant at the original hearing, this letter pre-dates the events that occurred in this tenancy by over one year. The tenant also added her own hand-written and disjointed notes on the doctor's letter, chronicling her account of the stress that she has suffered following receipt of the original decision.

I fully accept that the tenant has found the original decision and Order of Possession issued on March 22, 2013 stressful. While the doctor's letter appears to be new evidence not considered at the original hearing, I find that this letter meets none of the other four tests outlined above that would enable me to issue a review hearing on the basis of new and relevant evidence. It was clearly in existence at the time of the original hearing and has little bearing on the specific incidents and interactions with other tenants that gave rise to the Arbitrator's original decision.

2) The tenant's second set of new evidence is a series of four letters prepared by neighbours and friends attesting to her character and that that of her son. Again, this is clearly new evidence. However, all of these letters could have been obtained before the original hearing and were not. All were obtained shortly before the tenant applied for her review of the original decision. Some are properly dated; some are not. The letters are basically testimonials that I find would have little bearing on the Arbitrator's decision.
3) The tenant has attached a recent paystub and record of employment to demonstrate the household income. This is new evidence, but has no relevance whatsoever to the issues that were before the original Arbitrator.
4) The tenant also included a gas bill to show that the tenants had paid their utility bills. As the payment or lack of payment of utility bills was not an issue that was in dispute at the original hearing, I find no relevance of this issue to the original decision.
5) The tenant also maintained that she had offered to pay her March 2013 rent on a number of occasions, but the landlord had refused to accept payment. As payment of rent was not an issue that factored into the landlord's application and was not a point of contention at the original hearing or in the original decision, I find that this is an irrelevant reason to request a review of the original decision.

While I accept that all or at least most of the tenant's evidence is new, I find that much of her new evidence could have been obtained and provided in advance of the March 22, 2013 hearing. Those portions of the tenant's new evidence that could not have been obtained before the original hearing relate to events and circumstances that have occurred after the original decision was issued. These clearly cannot be considered in the context of the issues that were before the original Arbitrator. I also find that the

evidence submitted by the tenant is not relevant to the matter before the original Arbitrator and would not have had a material effect on his original decision.

I find that the tenant has failed to meet at least three of the five criteria outlined above that would enable me to grant her request for a review of the March 22, 2013 decision. Much of the tenant's application for review appears in the nature of an attempt to ask for additional consideration of the tenant's circumstances and to re-argue the matters that were before the Arbitrator at the original hearing based on new evidence that the tenant has submitted after receiving his decision and Order. The review process is not designed to allow an unsuccessful party to reargue issues that were before the Arbitrator at the first hearing by introducing new evidence and arguments that were not presented by a party at the original hearing. I dismiss the tenant's application for review on the basis that the application discloses insufficient evidence of this ground for review.

Overall, the tenant's application does not disclose any basis upon which, even if the submissions in the application were accepted, the decision or order of the original Arbitrator should be set aside or varied. The original decision is therefore confirmed.

Decision

The decision and Orders made on March 22, 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: April 12, 2013

Residential Tenancy Branch