



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute codes: CNC FF MNDC

Introduction

This is an application by the tenant for review consideration of the November 5, 2012 decision rendered on the landlord's original application. The hearing was held on November 5, 2012 and the decision was received by the tenant on December 19, 2012. The tenant is also requesting a review of the Order of Possession reissued on January 11, 2013 that was received on February 4, 2013.

At the original hearing, the landlord had been granted an Order of Possession based on a One-Month Notice to End Tenancy for Cause dated September 27, 2013. The tenant did not appear at the original hearing held on November 5, 2012.

Section 72(2) of the *Manufactured Home Park Tenancy Act* provides that a party to the dispute may apply for a review of the decision by proving that there are 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 not available at the time of the hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The tenant based his application for Review Consideration on all three grounds above.

The tenant is also requesting an extension of time to submit the request for Review Consideration, as it was filed beyond the statutory deadline to apply.

Preliminary Matter-Request for Extension of Time to Apply

The tenant indicates in his Application for Review Consideration that the decision issued on November 5, 2012 was not actually received by the tenant until December 19, 2012. In his application the tenant also indicates that the reissued monetary order dated January 11, 2013 was not received by the tenant until February 4, 2013.

After receiving the monetary order on February 4, 2013, The tenant made an application seeking a Request for Review Consideration, signed on May 2, 2013 and the request was received by the Residential Tenancy Branch on May 2, 2013.

Section 73 of the Manufactured Home Park Tenancy Act states that a party must make an application for review of a decision or order of the director within the following period:

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

(iii) a notice to end a tenancy agreement other than under section 39
[landlord's notice: non-payment of rent]; (My emphasis)

Pursuant to section 72(b) of the Act, as excerpted above, I find that, to apply before the statutory deadline, the tenant had 5 days from February 4, 2013, which was the date that the reissued monetary order was received, in which to make an Application for Review Consideration. I find that the tenant would have been required to submit a completed application for processing on, or before, February 10, 2013.

Given the above, I find that the tenant's application, dated May 2, 2013, was submitted beyond the statutory 5-day deadline under the Act.

However, the tenant made a formal request asking to be granted an extension of time to make the application for review consideration. In the box with the heading:

"State why you were not able to apply for review within the required time frame and LIST and ATTACH evidence, such as a copy of a hospital admissions form."

The tenant provided the following information in support of the request for an extension of time in which to apply,

"I was incarcerated "imprisoned" from October 31/12 – until I was released March 11/ 2013" (Reproduced as written)

Although section 72(b) of the Manufactured Home Park Tenancy Act requires that the party make their application for a review within 5 days after a copy of the decision or order has been received by the party, section 59(1) of the Act does permit a Dispute Resolution Officer to grant an extension in exceptional circumstances.

In this instance, the tenant received the Order of Possession on February 4, 2013, but I find that he was incarcerated at the time and was not released until March 11, 2013. I find the tenant would therefore have been unable to make the application for Review until the end of his imprisonment. However, once released, the tenant could then make the application seeking review consideration within 5 days from the date he was freed. Despite this, the tenant's Application for Review was not signed until May 2, 2013, which is 50 days after his release date.

I find that the tenant hasn't provided sufficient evidence showing exceptional circumstances, for the period following his March 11, 2013 release date, that stopped him from applying within 5 days. I find there is no explanation to justify why the application was delayed from March 11, 2013, until May 2, 2013.

Based on the above, I find that I must decline to grant the tenant's request for an extension to apply for the Review Consideration. Therefore, I find that the Application for Review Consideration is beyond my authority to determine, because it was not made within the statutory deadline imposed by the Act.

Accordingly, the Application for Review Consideration cannot proceed and I hereby dismiss the tenant's application without leave. The decision dated November 19, 2012 and the Order of Possession, reissued January 11, 2013, stand.

Conclusion

The tenant's application is not successful. The request for an extension of time to apply for a Review Consideration beyond the 5-day statutory deadline is declined and the matter therefore cannot be considered for Review Consideration.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: May 17, 2013

Residential Tenancy Branch