



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNL FF

### Introduction

A dispute resolution hearing was held on August 16, 2011 by conference call and on September 7, 2011 the Dispute Resolution Officer issued a decision in favour of the applicant/tenant and issued an order for the respondents/landlords to pay \$2594.40 to the applicant

The respondent/landlords did not attend the August 16, 2011 hearing.

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.

### Issues

The applicants are claiming that they were unable to attend the original hearing because they were not served with notice of the hearing ,and have supplied a decision from a subsequent hearing with some comments from the Dispute Resolution Officer regarding service of the documents at the previous hearing.

The applicants are also claiming there is new and relevant evidence.

### Facts and Analysis

The application contains information under Reasons Number 1 & 2

### Reason 1

The applicants are claiming that they were never served with the notice of hearing because the Residential Tenancy Branch only served the notice of adjourned hearing to the tenant and the tenant did not serve them with a copy a the notice of adjourned hearing.

The applicants have supplied a decision from a Dispute Resolution Officer from a subsequent hearing and in that decision it states that the Residential Tenancy Branch audit notes show that the documents for the adjourned hearing were sent to the tenant only, for service on the landlord.

However the decision also states that the tenant stated that the landlord had been served with the notice of adjourned hearing as page 58 of her evidence package that was served on the landlord.

I have reviewed the file and I find that the tenant's testimony is correct. Not only was the landlord served with the notice of adjourned hearing as page 58 of the of the tenants evidence package, the tenant had even listed on her table of contents that page 58 was the notice of hearing.

Therefore is my decision that the landlords have not shown that they were unable to attend the original hearing because of circumstances that could not be anticipated or were beyond their control and I am not willing to grant a new hearing under reason 1

### Reason 2

The legal test for fresh evidence was referred to in *Gallupe v. Birch* (April 30, 1998) Doc. Victoria 972849 (BCSC), wherein the test established by *R. v. Palmer* [1980] 1 SCR 759 was approved ,and is stated to be as follows:

1. The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial, provided that general principle will not be applied as strictly in a criminal case as in civil cases.
2. The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial:

3. The evidence must be credible in the sense that it is reasonably capable of belief, and it must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

In this case it is my finding that the applicant has not shown that the “new evidence” could not, with due diligence, have been presented at the original hearing had they attended.

Therefore I am not willing to grant a new hearing under reason 2

#### Decision

This application for review is dismissed.

The decision made on September 7, 2011 stands.

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: November 15, 2011.

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Residential Tenancy Branch