



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR MNSD

Introduction

The dispute resolution hearing was heard on October 21, 2011 by conference call in October 31, 2011 a decision an order was issued.

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 applicant for review is claiming that there is new and relevant evidence that was not available at the time of the original hearing as follows:

1. Breakdown of quotation for repairs-only whole amount was previously available; had to contact contractor again to provide us with breakdown.
2. Tenancy agreement Feb 2011 to Jan 2012-to provide evidence to support claim as requested from decision.
3. Tenancy agreement Nov 2011 to Oct 2012-landlord had successfully rented out property again, at a decrease rent of \$1200.00 and therefore only seeking monetary order for loss of rent period up until end of October 2011 instead of January 2012.

Facts and Analysis

The application contains information under Reasons Number 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.

This therefore is not considered new evidence, but an attempt to improve the evidence and re-argue the case and the review system is not an opportunity for the parties to re-argue their case.

Decision

The review application is dismissed

The decision an order issued on October 31, 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.

Residential Tenancy Branch