



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD O

Introduction

The original dispute resolution hearing was heard on October 25, 2011 and the decision and order were issued on October 31, 2011.

The landlord was ordered to pay \$1150.00 to the tenant.

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 landlord is claiming that he was unable to attend the original hearing stating the following:

- On page 2 of the decision that clearly states that the registered mail was not received by the landlord. Accordingly, the landlord had no knowledge of the hearing. Page 1 is in error in that it finds that the landlord was served, when on page 2 it is acknowledged that he had not received the registered mail.

The landlord is also claiming that he has new and relevant evidence stating the following:

- The parties agreed that the landlord would have two weeks to clean and renovate the unit commencing October 1, 2010.

Facts and Analysis

The application contains information under Reasons Number 1 & 2

Reason 1

The Dispute Resolution Officer's decision does make the above statements, however it also states on page 3 the following:

- The landlord did not claim the registered mail, however, the *Act* also states that documents served by registered mail are deemed to have been served five days after mailing.

Therefore the Dispute Resolution Officer has made a finding that the documents were deemed to have been served five days after mailing, even if the landlord failed to claim them.

Therefore I am not willing to grant a review 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 have been presented at the original hearing had he attended.

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

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

Decision

The application for review is dismissed.

The decision made 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 24, 2011.

Residential Tenancy Branch