



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNR MNSD OPR

Introduction

The original hearing was heard on December 8, 2011, and the decision and orders were issued on that same date.

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 is claiming that she was unable to attend original hearing because she never received the hearing documents.

The applicant also claims that she has new and relevant evidence that was not available at the time of the original hearing.

Facts and Analysis

The application contains information under Reasons Number 1 & 2

Reason #1

The applicant claims that she was unable to attend the original hearing because she was never served with the notice of hearing, and only became aware of the fact that hearing had been held when she received the orders from the landlord.

In the original decision the Dispute Resolution Officer made a finding that the tenant had been served by registered mail in accordance with Section 89 of the Act. Registered mail is deemed served five days after mailing even if the respondent fails to pick up the mail or rejects the registered mail.

Therefore since the original Dispute Resolution Officer found that the tenant had been served, 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. 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. 2. the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial:
3. 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 she 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 new hearing under reason #2.

Decision

The request for a new hearing is dismissed.

The decision made on December 8, 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: December 21, 2011.

Residential Tenancy Branch