



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD

Introduction

The original hearing was held on November 30, 2011 and a decision and an order were issued on the same date. The applicant/landlord did not attend the original 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 applicant is claiming that she did not attend as she had no notice of the original hearing. She also questions whether the Residential Tenancy Act has jurisdiction over this matter.

The applicant is also stating that all evidence was available at the time of the original hearing but as she was unaware of the hearing this should be considered new and relevant evidence.

The applicant is also claiming that the tenant's accusations were false and therefore the original decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 1, 2, & 3

Reason Number 1

The applicant claims that she never received a notice to collect a registered letter, however I reviewed the original hearing documents and there is evidence provided it shows that a notice of registered mail was left for the applicant. Further at the original dispute resolution officer has found that the applicant was properly served.

With regards to the applicants claim that the Residential Tenancy Act has no jurisdiction in this matter, jurisdiction is not one of the grounds under which a dispute resolution decision can be reviewed.

Therefore it is my decision that I will not allow a new hearing pursuant to Reason Number 1

Reason 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. 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 and I will not allow a new hearing pursuant to Reason Number 2.

Reason Number 3

To prove an allegation of fraud the parties must show that there was a deliberate attempt to subvert justice. A party who is applying for review on the basis that the Dispute Resolution Officer’s decision was obtained by fraud must provide sufficient evidence to show that false evidence on a material matter was provided to the Dispute Resolution Officer, and that that evidence was a significant factor in the making of the decision. The party alleging fraud must allege and prove new and material facts, or newly discovered and material facts, which were not known to the applicant at the time of the hearing, and which were not before the Dispute Resolution Officer, and from which the Dispute Resolution Officer conducting the review can reasonably conclude that the new evidence, standing alone and unexplained, would support the allegation that the decision or order was obtained by fraud. The burden of proving this issue is on the person applying for the review. If the Dispute Resolution Officer finds that the applicant has met this burden, then the review will be granted.

In this case although the applicant has made allegations of fraud, she has not met the burden of proving that any of the information provided in the first hearing was fraudulent.

Therefore it is my decision that I will not allow a new hearing pursuant to Reason Number 3

Decision

It is my decision that I will not allow the request for a new hearing. The application for review is dismissed.

The decision and order issued on November 30, 2011 stand.

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: January 03, 2012.

Residential Tenancy Branch