



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC RR

### Introduction

The original dispute resolution hearing was held on December 13, 2011, and on December 14, 2011 a decision and order were 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/landlord is claiming that there is new and relevant evidence that was not available at the time of the original hearing.

### Facts and Analysis

The application contains information under Reason Number 2

The applicant has supplied a letter from a pest control company that she claims she was unable to get prior to the original hearing, because she was not notified of the original hearing until December 7, 2011 and the hearing was on December 13 2011, leaving her insufficient time to get the evidence required.

She believes the letter is relevant, as she believes it shows that the bed bug infestation was unknowingly caused by the tenants or their guests.

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 and although the applicant is claiming that there was insufficient time to collect this evidence, there is no evidence to show that she requested an adjournment from the original dispute resolution officer to allow more time to collect evidence.

Further even if this letter was provided at the original hearing I find it very unlikely that it would have changed the outcome because although it does state that bedbugs can be brought in by visiting people, it by no means meets the burden of proving that the bed bug infestation in was caused by the tenants.

### Decision

The application for review is therefore dismissed

The decision and order issued on December 14, 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: January 03, 2012.

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Residential Tenancy Branch