



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC

Introduction

The original hearing was held on December 21, 2011 and a decision and order were issued on the 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 claims 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 Reasons Number 2

The applicant claims that there is new and relevant evidence as follows:

1. A letter from the present tenants in the rental unit that was not available at the time of the original hearing, because the tenants were away for the Christmas season.

2. A letter from a Pest Control Company that inspected the previous tenant's belongings on January 9, 2012 for bedbugs, after the hearing was already concluded, and photos that were taken at the time of the inspection.

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.

There is no indication that the landlord request an adjournment of the original hearing to be able to get evidence from the present tenants, and therefore this would not be considered new evidence, but simply an attempt to collect and present more evidence.

Further I see no reason why the landlords could not have had a pest control company inspect the belongings prior to the original hearing and therefore again this is just an attempt to present more evidence.

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.

Decision

The request for a new hearing under the review process is dismissed.

The decision made on December 21, 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 19, 2012.

Residential Tenancy Branch