



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNDC MNSD OPR

Introduction

The original hearing was held on March 8, 2012 and decision 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

1. Whether an extension of time should be granted to apply for this review hearing.
2. Whether or not the applicant was unable to attend the original hearing due to circumstances that could not be anticipated or were beyond her control
3. Whether or not the applicant 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

The applicant has requesting an extension of time to apply for the review hearing, however she has failed to provide the information required on the application.

The applicant has not provided the date on which she received the decision or order, or how they were received.

Further the applicant has provided no information as to why she was not able to apply for review within the time frame.

In the absence of the above required information I am unable to make an informed decision as to whether or not an extension of time is reasonable.

I therefore deny the request for an extension of time to apply for review, of the Order of Possession.

The tenant obviously applied within the time frame for the monetary order, as the order was initially issued on March 8, 2012 and the tenant applied on March 12, 2012, and therefore I will deal with her request for review of the monetary order.

The tenant has argued that she could not attend the original hearing because she did not receive the registered mail notification until March 9, 2012 and the hearing was held March 8, 2012, however the Canada Post tracking information supplied by the tenant indicates that a notification card to pick up the register mail was left at the rental unit on February 27, 2012.

Therefore I am not convinced that the applicant was unable to attend the original hearing due to circumstances that cannot be anticipated and were beyond her control.

The applicant also states that she has new and relevant information that was not available at the original hearing.

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.

Decision

This application for review is dismissed

The decision made on March 8, 2012 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: March 19, 2012.

Residential Tenancy Branch