



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MNSD O

Introduction

The original hearing was held on February 14, 2012 and a decision and order 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 the applicant was unable to attend the original hearing due to circumstances that could not be anticipated and were beyond his control.
2. Whether the applicant has new and relevant evidence that was not available at the time of the hearing.
3. Whether the Dispute Resolution Officer's decision was obtained by fraud.

Facts and Analysis

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

Reason #1

The applicant states that he was in attendance at the original hearing however shortly after the hearing began the Dispute Resolution Officer said something like "the call had ended" and then there was only silence. He waited approximately 30 seconds and

asked twice if there was anyone on the line and since there was no response he hung up, believing that the Dispute Resolution Officer had found in his favour.

I have reviewed the original decision and in the Dispute Resolution Officer's decision she states that both parties appeared at the hearing and gave evidence under oath, and therefore I find it hard to believe that the applicant did not participate in the hearing, as I am sure the Dispute Resolution Officer would have noted if one of the participants had left the line.

Further I find it hard to believe that the applicant would have thought that the hearing was over after only five minutes, and therefore even if he did leave the line, it was not a reasonable action to take.

Therefore 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.

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

Reason #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 the applicant alleges that the tenant fraudulently convinced the Dispute Resolution Officer that he had provided a forwarding address in writing, however right in the Dispute Resolution Officer's decision it states that "the tenant says he **did not** provide his forwarding address in writing to the landlord because the landlord has always known what his address is".

Therefore I am also not willing to grant a new hearing under reason #3

Decision

I am not willing to grant a new hearing through the review process

The decision and order issued on February 14, 2012 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: March 22, 2012.

Residential Tenancy Branch