



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNR

Introduction

The original hearing was held on March 21, 2012 and a decision and order were issued on March 22, 2012

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

Whether or not the applicant was unable to attend the original hearing due to circumstances that could not be anticipated, and were beyond her control.

Whether or not 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 1 & 2

Reason Number 1

The applicant states that she did not receive the notice of hearing and hearing package because the landlord mailed it to the wrong address and not her home address where she actually lives even though the landlord was aware of her mailing address.

In support of this claim the applicant has supplied a copy of the letter sent to her by the landlord for a previous hearing, and that letter was sent to her proper address. She argues that this shows that the landlord was aware of her proper address and failed to serve her properly.

The tenant however admits that she did receive the notice of hearing by March 19, 2012 and therefore since the hearing was not held until March 21, 2012, I am not convinced that the applicant was unable to attend the original hearing.

The tenant also argues that she was required to attend a meeting at the hospital on the morning of March 21, 2012, however I see no reason why the tenant could not have had an agent attend the hearing, if only to request an adjournment.

I am not willing to grant 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, 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.

I am not willing to grant a new hearing under Reason Number 2.

Decision

The request for a new hearing under the review process is denied

The decision made on March 22, 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: April 17, 2012.

Residential Tenancy Branch