



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute codes: FF MNDC MNSD

### Introduction

The original dispute resolution hearing was held on June 20, 2012 and the decision an order was 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

Whether or not there is new and relevant evidence that was not available at the time of the original hearing.

Whether the decision of the Dispute Resolution Officer was obtained by fraud.

Whether or not, if the submissions of the applicant are accepted, the decision of the original Dispute Resolution Officer should be set aside or varied.

### Facts and Analysis

The application contains information under Reasons Number 2 & 3

### Reason number 2

The applicant is claiming there is new evidence as follows:

1. Mistakenly e-mailed my supporting documents-not realizing at the time that they would not be accepted.
2. Witness to confirm the level of uncleanliness to the stovetop, stovetop grills and outside of kitchen cabinets, and the damage to the screen door. One of these witnesses was the person who repaired the screen door.
3. Pictures of, and the actual damaged gas stovetop grills-to see the damage

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.

### Reason number 2

The applicant states that:

1. Tenant was not telling the truth when he said that he was unaware of any damage to the screen door, kitchen sink or gas stovetop and grills.
2. Pedram submitted documents to RTB that I did not receive a copy of. The officer seemed to ignore my request to see these documents to confirm the accuracy of content.

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 has not met the burden of proving that the dispute resolution officer's decision was obtained by fraud, and again this appears to be another attempt to reargue the case.

Further it is my finding that even if the applicants arguments were accepted, there would be no reason to set aside or vary the Dispute Resolution Officer's decision because in this case the dispute resolution officer's decision to order the return of double the security deposit was based solely on the fact that the landlord failed to comply with the Residential Tenancy Act, and had nothing to do with the condition in which the rental unit was left.

As stated in the original Dispute Resolution Officer's decision, The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

### Decision

This application for a review hearing is dismissed

The decision and orders issued on June 20, 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: July 16, 2012.

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Residential Tenancy Branch