



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: MNDC MNSD

Introduction

A dispute resolution hearing was held on July 5, 2012 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

Whether or not there is new and relevant evidence that was not available at the time of the original hearing, and whether or not the dispute resolution officer's decision was obtained by fraud.

Facts and Analysis

The application contains information under Reasons Number 2 & 3

Reasons 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.

The applicant claims he did not attend the original hearing because the notice of hearing was not mailed to his usual mailing address, however the Dispute Resolution Officer made a finding at the original hearing that, since the documents were sent by registered mail to the address at which the landlord resides, they have been properly served according to the Act.

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.

Reasons Number 3

The applicant is alleging that the original decision was obtained by fraud and lists the following points:

- This person was not on the rental contract.
- There was no oil loss.
- My address is in Port Alberni not Duncan.

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 is my finding that the applicant is not met the burden of proving that the original decision was obtained by fraud.

These are points it could have been argued at the original hearing had the landlord attended and therefore this is also considered an attempt to reargue.

Decision

The application for review is dismissed.

The decision and order issued on July 5, 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: August 15, 2012.

Residential Tenancy Branch