



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC MT

### Introduction

A dispute resolution hearing was held on August 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

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

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

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 number 1

The applicant states:

- A bicycle accident and my glasses were smashed. I called on time but use the old conference number. That number told me I was the only person on the conference.

It is my finding that the applicant has not shown that he was unable to attend the hearing due to circumstances that could not have been anticipated and were beyond his control. In this case he did not attend the original hearing due to an error he made himself. The applicant had the correct information; however the applicant made an error and did not connect into the correct conference call.

Therefore I am not willing to grant a review hearing under reason number 1.

### Reason number 2

The applicant states:

- I was unable to reach the conference call due to an accident that occurred on August 14, 2012 I called on that date but used the wrong access code. I have witnesses that will testify to my accident.

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. 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. the evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial:
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 this is not new evidence, this is just a second attempt to argue that he was unable to attend the original hearing.

I am therefore not willing to grant a review hearing under reason number 2.

### Reason number 3

The applicant states:

- I attended the first conference but the landlord was not on the conference call. The arbitrator told me I was on time, but was alone on the phone.

This is not evidence of fraud, and does not even relate to this hearing, this relates to a previous conference call.

Therefore I am not willing to grant a review hearing under reason number 3

### Decision

This application for a review hearing is dismissed

The decision made on August 14, 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: August 27, 2012.

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Residential Tenancy Branch