

## REVIEW CONSIDERATION DECISION

Dispute Codes: CNC

### Introduction

The dispute resolution hearing was held on September 04, 2012, and a decision and order were issued on September 5, 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 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 2 & 3

### 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. The applicant attended the original hearing and I see no reason why the applicant could not made the same arguments at that time.

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 review hearing under Reason number 2

### Reason number 3

The applicant states “the landlord did not inform the DRO that he had been provided with rent for the month of September when the 1 Month Notice to End Tenancy was effective September 1, 2012.

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.

Again I see no reason why these arguments could not been raised at the original hearing, considering that the applicant attended that hearing. This information cannot be considered to be new or newly discovered material facts.

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 September 5, 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: September 20, 2012.

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Residential Tenancy Branch