



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes: FF MND MNDC MNR

Introduction

A dispute resolution hearing was held on November 27, 2012 and a decision was issued on November 28, 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

The issue is 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 2

The applicant states that she has obtained a report from the Fire Department that states that there were three persons present on the top floor of the home when the fire Department responded, and not just one person as was reported in the original dispute resolution hearing.

The applicant request of this information from the fire department after the previous dispute resolution hearing and receive the e-mail from the fire department on December 5, 2012.

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 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.

Further I find it unlikely that even if this evidence were presented at the hearing that it would have changed the result. The applicant has argued that it shows that the tenant's daughter and one female friend and one male friend were upstairs at the time of the fire; however the report from the Fire Department states that there were two males, that they understood were residents, and one female who was believed to be a guest. This information does not reinforce the landlords claim that the tenant's daughter was present.

Decision

This application for review hearing is dismissed.

The decision made on November 28, 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: December 13, 2012.

Residential Tenancy Branch