



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes FF, MNR, MNSD, OPR, RP, MNDC

Basis for Review Consideration

Section 79(2) of the Residential Tenancy Act (Act) states that 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.

Applicant's Submission

The application for review consideration states the decision should be reviewed on the ground(s) that there is new and relevant evidence that was not available at the time of the original hearing and the original decision and orders were obtained by fraud.

The applicant or claiming that numerous receives supplied by the landlord were not relevant to their tenancy, the landlord lied about serving a 10 day notice, and that

they didn't receive the landlords evidence package until two days after the hearing.

The applicants also claiming that false information provided by the landlords influence the decision, stating "S(landlord) claims we were to be paying \$1500.00, when you're property manager/husband said \$1250.00 why wouldn't she contact us for 4 months of this was an issue.

Analysis

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. There is no indication in the original decision or in this application that the tenants ever inform the arbitrator that they had not received the landlord's evidence.

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.

As far as the claim that the arbitrator's decision and orders were obtained by fraud, and the argument that they were supposed to be paying \$1250.00 rather than \$1500.00, obviously the arbitrator's decision was not affected by any alleged fraud, because the arbitrator made the finding that the tenants were only to be paying \$1250.00.

It's my decision therefore that I will not allow a Review Hearing

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on March 25, 2013 are confirmed.

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: April 09, 2013

Residential Tenancy Branch