



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW CONSIDERATION DECISION

Dispute Codes CNR, MNDC, RR, FF, MNR, OPR

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) of all three of the above.

Unable to attend

The applicant states that she was unable to attend the original hearing due to medical reasons.

New and relevant evidence

The applicant states that she would like to address the extra person's downstairs with extra showers and using the kitchen, which they absolutely did, we always could smell it.

Fraud

The applicant states that the landlord said the old dryer was filled with lint, when I first moved in they were there when I had to clean and the filters and lint myself, it looked like it had never been cleaned. They witnessed this

Analysis

Ground Number 1

The applicant states that she was unable to attend due to medical reasons and has provided a letter from her psychiatrist, however although the psychiatrists letter does show that the tenant has some medical problems, it does not explain her absence from the hearing.

This hearing was set to deal with applications filed by both the landlord and the tenant, and therefore the tenant was fully aware of the date and time of the hearing, as that information is fully explained to applicants at the time that they pick up their hearing package; as well the information is given to them in writing.

Therefore it is my decision that I will not grant a new hearing under Ground Number 1.

Ground 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 had she attended.

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.

Therefore I am not willing to grant a new hearing under Ground Number 2.

Ground Number 3

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 Arbitrators decision was obtained by fraud must provide sufficient evidence to show that false

evidence on a material matter was provided to the Arbitrator, 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 Arbitrator, and from which the Arbitrator 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 Arbitrator finds that the applicant has met this burden, then the review will be granted.

In this case the applicant has made allegations of fraud against the landlord, however she has provided no evidence to support those allegations and that is insufficient for me to make a finding of fraud.

Therefore I am not willing to grant a new hearing under Ground Number 3.

Conclusion

I dismiss the Application for Review Consideration. The original decision and order(s) made on April 04, 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 15, 2013

Residential Tenancy Branch