



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

*Pursuant to Division 2, Section 79(2) of the Residential Tenancy Act, SBC 2002, c. 78, as amended.*

### Introduction

A Dispute Resolution Hearing was held on June 24, 2013, and August 8, 2013, and a decision was issued on August 15, 2013.

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

Is there new and relevant evidence that was not available at the time of the original hearing?

Was the original decision obtained by fraud?

### Facts and Analysis

The application contains information under Reasons Number 2 & 3

### Reasons Number 2

The applicant states that the new and relevant evidence is a dispute resolution services decision dated April 18, 2013, and an order dated April 18, 2013, file number 536082.

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. As stated above, the decision in file number 536082 was issued April 18, 2013, and the hearing that is the subject of review was held on the dates of June 24, 2013, and August 8, 2013 and therefore there should have been plenty of time for the applicant to present that evidence at the 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.

### Reasons 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 Arbitrator’s 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.

The applicant has alleged that there was fraudulent information provided at the original hearing; however it is my finding that the applicant has provided insufficient evidence to support that claim, and in fact appears to be some of the same arguments that were made at the original hearing.

This too appears to be an attempt to re-argue the case and as stated above the review process is not an opportunity to reargue the case.

### Decision

This application for review hearing is dismissed

The decision and order issued on August 15, 2013 stand.

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: October 03, 2013

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Residential Tenancy Branch