



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: ERP MNDC O OLC RP

### Introduction

A dispute resolution hearing was held on November 13, 2013, and a decision and Order was issued on that same date.

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

Were the applicants unable to attend the original hearing because of circumstances that could not be anticipated and were beyond their control?

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 1, 2, & 3

### Reasons Number 1

The applicants are claiming that they had to move out of the rental unit because it was unhealthy to be in, and they left some of their paperwork in the unit and as a result did not have the phone number for the hearing, and were unable to get through to the Residential Tenancy Branch to obtain the number.

It is my finding that this is not reasonable grounds for a review hearing as the applicants were not unable to attend the original hearing due to circumstances that were beyond their control, and in fact the reason they did not attend was because they had forgotten to take their paperwork with them when they left the rental unit.

I therefore will not grant a new hearing under reason number 1

### Reasons Number 2

The applicants are claiming there is new and relevant evidence that was not available of the time of the original hearing which include; a BC wide TV news story, a contract signed under duress, a safety Authority fail, and more doctor's notes.

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 applicants have not shown that the "new evidence" could not, with due diligence, been presented of the original hearing, had they attended.

This therefore is not considered new evidence and I will not grant review hearing under reason number 2.

### Reasons Number 3

The applicants are claiming that the original decision was obtained by fraud stating “Everything M says. He is a slumlord never did anything broke every RTA rule”.

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.

In this case, although the applicant's are alleging fraud, they have supplied no evidence in support of those allegations.

I therefore will not grant review hearing under reason number 3

### Decision

This application for review hearing is dismissed.

The decision and Orders issued on November 13, 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: November 18, 2013

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Residential Tenancy Branch