



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPN, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on the tenant's notice to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent, DL ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the operations manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing. This hearing lasted approximately 28 minutes in order to allow both parties to fully present their submissions and to negotiate a settlement of this claim.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rules 7.1 and 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* state the following:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant called in late to the hearing at 9:39 a.m., when the hearing began at 9:30 a.m. When questioned as to why he was late, the tenant said that he “got carried away with work.” I advised the tenant that I had already started the conference and heard evidence from the landlord. I repeated the evidence given by the landlord in the tenant’s absence. I also warned the tenant that I could have made a decision in his absence if he had failed to attend the hearing. I caution the tenant to make note of the above rules prior to attending any future hearings at the RTB.

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

During the hearing, the tenant repeatedly interrupted me while I was speaking. When I warned the tenant repeatedly that his behaviour was inappropriate, he continued interrupting me. However, I allowed the tenant to attend the full hearing, despite his inappropriate behaviour, in order to provide him with an opportunity to present his testimony and to respond to the landlord’s application. I caution the tenant not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings.

Rule 7.17 of the RTB *Rules of Procedure* states the following:

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence.

I provided the tenant with ample opportunity to speak during the hearing. The tenant insisted on repeatedly providing irrelevant evidence during this hearing about a claim

that he wanted to make against the landlord. He spoke about late fees and the landlord “double charging” him for rent. I advised the tenant that he was providing irrelevant evidence that was not relevant to the landlord’s claim. I notified the tenant that the landlord had withdrawn its monetary claim for unpaid rent. I advised the tenant that he had not filed an application against the landlord and that he was free to do so after the hearing. I advised him that I was only able to deal with the landlord’s application before me. Yet the tenant kept repeating the same information continuously throughout the hearing, stating that I had not given him a chance to provide his testimony. I caution the tenant to observe the above rule at any future RTB hearings.

Service

The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package (“Application”). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s Application.

The tenant said that he sent two pages of written evidence to the landlord by way of facsimile. The tenant could not confirm the date of service. The landlord said that she did not receive the two pages of evidence. However, the landlord said that she received one of the two pages of evidence from the tenant prior to the landlord’s application being filed. As this matter settled, I do not find it necessary to make findings of service regarding this evidence.

At the outset of the hearing, the landlord confirmed that she wished to withdraw the landlord’s application for a monetary order for unpaid rent and to retain the tenant’s security deposit against this monetary order. The landlord said that the tenant had paid rent in full, including for April and May 2016. Accordingly, these portions of the landlord’s application are withdrawn.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recover the filing fee paid for this Application?

Background and Evidence

Both parties agreed to the following facts. This tenancy began on January 1, 2015. Monthly rent in the current amount of \$1,209.07 is payable on the first day of each

month. The tenant paid a security deposit of \$587.50 and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A copy of the written tenancy agreement was provided for this hearing.

The landlord seeks an order of possession based on a notice provided by the tenant to end this tenancy. The landlord also seeks to recover the \$100.00 filing fee paid for this Application.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on May 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit.

This term comprises the full and final settlement for both parties. Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final and binding and enforceable.

The parties were unable to agree on the landlord's application to recover the \$100.00 filing fee and asked me to make a decision. As this matter settled and I was not required to make a decision on the merits of the landlord's application, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on May 31, 2016. The landlord is provided with this Order in the above terms

and the tenant must be served with this Order in the event that the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on May 31, 2016. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent and to retain the tenant's security deposit is withdrawn.

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: May 06, 2016

Residential Tenancy Branch