



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF; CNC, CNR

Introduction

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

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 7, 2016 ("10 Day Notice"), pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated June 27, 2016 ("1 Month Notice"), pursuant to section 66.

The landlord and his lawyer, JD (collectively "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 provided written authorization that his lawyer could speak on his behalf at this hearing.

This hearing lasted approximately 52 minutes in order to allow both parties to fully present their submissions, negotiate a settlement of a portion of these applications and due to repeated interruptions by the tenant during the hearing. The tenant disconnected from the hearing three times at 11:38, 11:43 and 11:50 a.m. Each time, I advised the tenant about what occurred in his absence. The tenant said that he disconnected from the hearing because he was upset.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

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

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.

At the outset of the hearing, I advised both parties that one person was to speak at any given time, that parties were not to interrupt while others were speaking, and that both parties would be given a chance to speak. Throughout the hearing, the tenant repeatedly interrupted the landlord and me. The tenant asked to speak to another representative of the RTB, aside from me, during the hearing, repeatedly yelled at the landlord and me, said that he controlled the length of the conference, and would not listen to my comments or questions. I provided the tenant with ample time during the hearing to get his paperwork and affairs in order.

The tenant displayed disrespectful and inappropriate behaviour throughout this hearing. I repeatedly warned the tenant to stop his inappropriate behaviour but he continued. 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 application, respond to the landlord's application and negotiate a settlement.

I caution the tenant not to engage in the same behaviour at any future hearings at the Residential Tenancy Branch ("RTB"), as this behaviour will not be tolerated and he may be excluded from future hearings.

Preliminary Issue – No Recordings of Hearing Permitted

During the hearing, the tenant threatened to record the hearing. The tenant also had a witness enter the room and threaten to record the hearing. When questioned, the tenant would not identify who the witness was. During the hearing, I advised the tenant that witnesses could not listen to ongoing proceedings and that no recording of the hearing was permitted.

For the tenant's information, Rule 9.1 of the RTB *Rules of Procedure* states:

Private audio, photographic, video or digital recording of the dispute resolution proceeding is not permitted.

Preliminary Issue – Adjournment Requests

The landlord confirmed that his first written evidence package was personally served upon the tenant on July 7, 2016 and the second written evidence package was served to the tenant on July 19, 2016. The tenant confirmed receipt of the above documents. However, the tenant said that he had insufficient time to respond to the landlord's written evidence, as it was late according to the *Rules of Procedure*. I advised the landlord that his evidence was late, as it was due at least 14 clear days prior to this hearing not including the hearing date, as per Rule 3.14 of the *Rules of Procedure*.

At the outset of the hearing, the landlord requested an adjournment of the hearing in the event that his written evidence was not accepted at this hearing. However, immediately thereafter, both parties agreed to a settlement of the end of tenancy issue. The landlord's written evidence was related to the end of tenancy issue. Accordingly, I did not consider the landlord's written evidence at this hearing.

At the conclusion of this hearing, the tenant attempted to make an adjournment request, stating that he was not prepared to respond to the landlord's written evidence. The tenant did not provide any further submissions to explain his adjournment request and continued yelling at me, disconnecting from the hearing and refusing to listen to my comments that I was not considering the landlord's written evidence at this hearing.

At the outset and conclusion of this hearing, I advised the parties that I was not granting an adjournment of the hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*"), which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I advised both parties that an adjournment of this hearing was not required and would not be granted. I advised both parties that both applications related to urgent end of tenancy and order of possession issues that had to be dealt with immediately, as an adjournment would delay the process. Both parties only identified the landlord's written evidence as a reason for adjourning the hearing and I did not consider such evidence at this hearing because both parties voluntarily settled the end of tenancy issue. Both parties also made voluntary submissions regarding the landlord's application for a monetary claim and did not request or identify any reasons why an adjournment of this claim was required.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include July 2016 rent of \$600.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice and a 1 Month Notice required him to vacate earlier. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. The tenant also testified about July 2016 unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent.

During the hearing, the landlord abandoned his claim to recover the filing fee of \$100.00. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

Background and Evidence

The landlord stated that this tenancy began on December 1, 2015. Both parties agreed that this was a verbal month-to-month tenancy agreement. Both parties agreed that rent in the amount of \$600.00 is payable on the first day of each month and the tenant did not pay a security deposit to the landlord.

The landlord seeks an order of possession for unpaid rent and cause, based on the 10 Day Notice and 1 Month Notice. The tenant seeks to cancel both notices. The landlord also seeks to recover unpaid rent of \$600.00 for each of June and July 2016, totalling \$1,200.00. The tenant agreed that he did not pay rent of \$1,200.00 from June to July

2016 to the landlord, stating that the landlord refused his rent. The landlord denied refusing any rent from the tenant.

Issues to be Decided

Should the landlord's 10 Day Notice and 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent or cause?

Is the landlord entitled to a monetary order for unpaid rent?

Analysis

Settlement of End of Tenancy Issues

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 a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their application:

1. Both parties agreed that this tenancy will end by 5:00 p.m. on July 31, 2016, by which time the tenant and any other occupants will have vacated the rental unit.

Decision regarding Landlord's Monetary Claim

Pursuant to section 67 of the *Act*, I award the landlord \$1,200.00 total in unpaid rent for June and July 2016. The tenant agreed that this rent was not paid to the landlord. The tenant continues to live in the rental unit and has agreed to vacate by July 31, 2016. The tenant does not have entitlement under the *Act* to deduct any amounts from rent.

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 5:00 p.m. on July 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 5:00 p.m. on July 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.

I issue a monetary Order in the landlord's favour in the amount of \$1,200.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

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: July 20, 2016

Residential Tenancy Branch