



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP, LRE, AAT, RR, O, FF

Introduction

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

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an order to allow access to and from the rental unit for the tenant's guests, pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- other remedies, identified as monetary compensation, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties 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 manager for the owner of the rental building and that she had authority to speak on behalf of the owner at this hearing. This hearing lasted approximately 96 minutes in order to allow both parties to fully negotiate a settlement of this claim.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence.

The landlord said that she did not receive the tenant's written and digital USB evidence until February 10, 2017. She said that she was unable to access to the tenant's digital USB evidence. The tenant provided a "Digital Evidence Details" form indicating that he confirmed that the landlord was able to see and hear his digital USB evidence prior the hearing. He said that the landlord was able to see and hear his digital USB evidence from a previous Residential Tenancy Branch ("RTB") hearing so he assumed she could see and hear this new evidence too. I notified the tenant that I could only consider his 5 written letters at this hearing because the landlord had received and reviewed it. I advised the tenant that I could not consider his digital USB evidence at the hearing because it was late, received by the landlord less than 14 days prior to the hearing, contrary to Rule 3.14 of the RTB *Rules of Procedure*. The landlord was also unable to access the digital USB evidence which the tenant is required to confirm at least 7 days prior to the hearing, contrary to Rule 3.10 of the RTB *Rules of Procedure*. As the parties settled this application, the digital USB evidence was not considered in any event.

Preliminary Issue – Adjournment Request by Tenant

When I notified the tenant that I could not consider his digital USB evidence at this hearing, he requested an adjournment to have more time to re-submit the evidence and ensure that the landlord could hear and see it. He said that he was busy at work and did not have enough time prior to the hearing to gather his digital USB evidence. The landlord opposed the tenant's adjournment request saying that she wanted a final resolution of this matter.

During the hearing, I advised the parties that I was not granting an adjournment of this hearing. I did so after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules of Procedure*, 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.*

The tenant filed his application on January 24, 2017. This hearing was held on February 21, 2017, almost one month later. I find that the tenant had ample time to prepare for this hearing and to gather his digital evidence to serve to the landlord. The digital USB evidence was from events that took place in 2015 and 2016, one to two years prior. The tenant has been through the hearing process before, as he filed the last application against the landlord which was heard at the RTB on July 28, 2016, after which a decision of the same date was issued by a different Arbitrator. The file number for this “previous RTB hearing” appears on the front page of this decision. A lot of the tenant’s digital USB evidence was irrelevant and connected to the previous RTB hearing. The landlord opposed the tenant’s adjournment request. I also find that as repair and access orders, as well as rent reduction issues are involved, this is an urgent application that must be dealt with as early as possible and expeditiously.

After the above ruling was made, both parties voluntarily agreed that they wanted to fully settle this application. Below are the settlement terms.

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, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The landlord agreed, at her own cost, to have certified, licensed technicians repair the following items to proper, working order, at the rental unit by March 15, 2017;
 - a. The deck and the railing;
 - b. The balcony screen door;
2. Both parties agreed that the above repairs in condition #1 will only be completed once the following conditions are met first:
 - a. The tenant agreed to provide access to the rental unit in order for the certified, licensed technicians to perform the repairs in condition #1 above;
 - b. Both parties agreed that the landlord is only permitted to enter the patio area of the tenant’s rental unit, not anywhere else in the tenant’s rental unit, for the repairs to be completed in condition #1 above;

- c. The tenant agreed to remove his belongings and furniture from the deck at the rental unit in order to permit the certified, licensed technicians to complete the repairs in condition #1 above;
3. Both parties agreed that if the landlord does not abide by condition #1 above, provided that the terms in condition #2 are met first, the tenant will deduct \$150.00 from his monthly rent beginning on April 1, 2017, and until condition #1 above is met;
 - a. Both parties have leave to reapply at the RTB if they disagree as to whether the rent reduction should continue or end;
4. The landlord agreed to allow the tenant's guests access to the tenant's rental unit, even when the tenant is away from the rental unit, and to not harass the tenant's guests;
 - a. Both parties also agreed that they will call the police if they have any criminal complaints against each other;
5. The tenant agreed to inform his guests even when he is away from the rental unit, that only the tenant, no other persons, are permitted to smoke marijuana on the balcony of the rental unit as per the previous RTB decision and the parties' signed addendum to the tenancy agreement, dated October 29, 2016;
6. Both parties agreed that the tenant, at his own cost, will arrange for the police to attend future inspections and repairs conducted by the landlord at the rental unit, as the tenant sees fit;
7. The landlord agreed to abide by section 29 of the *Act* regarding providing notice to the tenant before entering the rental unit;
8. The landlord agreed to not record any videos of the tenant or his belongings inside the rental unit;
9. The landlord agreed to pay the tenant a total of \$1,357.50 on the following terms:
 - a. The tenant will not be required to pay rent of \$905.00 to the landlord for the period from March 1 to 31, 2017;
 - b. The tenant is entitled to a rent reduction of \$452.50 for the period from April 1 to 30, 2017;
 - c. The tenant will only be required to pay rent of \$452.50 to the landlord for the period from April 1 to 30, 2017;
10. The tenant agreed to bear the cost of the \$100.00 filing fee paid for his application;
11. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. Both parties affirmed at the hearing that they understood and agreed to

the above terms, free of any duress or coercion. Both parties affirmed that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

Conclusion

The tenant must bear the cost of the \$100.00 filing fee paid for this application.

I order both parties to comply with the above orders.

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: February 21, 2017

Residential Tenancy Branch