



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding B.C. ROOMS
and [tenant name suppressed to protect privacy]
REVIEW HEARING DECISION

Dispute Codes OPR, MNR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The landlord's two agents, MHM and WM, and the tenant and his advocate, SAC 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's two agents confirmed that they had authority to speak on behalf of the landlord company named in this application, at this hearing (collectively "landlord"). The tenant confirmed that his advocate had authority to speak on his behalf at this hearing.

The hearing began at 9:30 a.m. with me and the landlord's two agents present. The tenant and his advocate called in late at 9:38 a.m., stating they had transportation trouble and difficulty calling into the hearing. I advised the tenant and his advocate what occurred before they called into the hearing. The hearing concluded at approximately 11:15 a.m. This hearing lasted approximately 105 minutes in order to allow both parties to negotiate a settlement of this application, due to repeated interruptions by the tenant and his advocate, and because I had to explain information repeatedly to the tenant and his advocate during the hearing.

Preliminary Issue – Previous Hearings and Service of Documents

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing ("direct request hearing"). A decision, dated March 21, 2017, ("direct request decision"), was issued by an Adjudicator for the direct request proceeding. The direct request decision was based on the landlord's paper application only, with no submissions made by the tenant. The direct request decision granted the landlord an order of possession and a monetary order against the tenant.

The tenant applied for a review of the direct request decision, alleging fraud. A new review hearing was granted by a different Arbitrator, pursuant to a review consideration decision, dated April 6, 2017 ("review decision"). By way of the review decision, the tenant was required to serve the landlord with a copy of the review decision and the notice of review hearing.

The tenant confirmed that he submitted the review decision and notice of review hearing to the landlord. He claimed that he did not serve the written evidence that he submitted with his review application to the landlord. The landlord confirmed receipt of the review decision and notice of review hearing. The landlord claimed that no written evidence was received from the tenant. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the review decision and notice of review hearing. I advised both parties that I could not consider the tenant's written evidence at this hearing or in my decision because the tenant did not serve it to the landlord as required by Rule 3.1 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. In any event, this evidence was not considered because the parties decided to settle the matter.

The tenant confirmed receipt of the landlord's direct request application, as well as the landlord's additional written evidence package submitted on April 21, 2017, by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's direct request application.

The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2017 ("10 Day Notice"). In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

Preliminary Issue – Inappropriate Behaviour by the Tenant and his Advocate 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 and his advocate repeatedly interrupted the landlord's agents and me. The tenant and his advocate repeated the same information during the hearing and when I asked questions, they would continue repeating the same information and ignoring my questions and instructions. The tenant and his advocate then complained that they did not like my questions.

The tenant and his advocate displayed disrespectful and inappropriate behaviour throughout this hearing. I repeatedly warned the tenant and his advocate to stop their inappropriate behaviour but they continued. However, I allowed the tenant and his advocate to attend the full hearing, despite their inappropriate behaviour, in order to provide them with an opportunity to respond to the landlord's application and negotiate a settlement with the landlord.

I caution the tenant and his advocate not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and they may be excluded from future hearings.

Settlement

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 and orders. 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 tenant agreed to pay the landlord rent in full of \$440.00 per month by the first day of each month for the remainder of this tenancy;
2. Both parties agreed that this tenancy will end by 1:00 p.m. on November 30, 2017, by which time the tenant and any other occupants will have vacated the rental unit, in the event that the tenant abides by condition #1 of the above settlement. In that event, the landlord's 10 Day Notice, dated March 2, 2017, is cancelled and of no force or effect;

3. Both parties agreed that the tenant is permitted to vacate the rental unit on his own accord, earlier than November 30, 2017, provided that he gives the landlord at least 30 days written notice prior to vacating;
4. Both parties agreed that this tenancy will end pursuant to a ten (10) day Order of Possession, if the tenant does not abide by condition #1 of the above settlement;
5. The tenant agreed to pay the landlord \$50.00 for the remaining outstanding rent for March 2017, by May 19, 2017;
 - a. Both parties agreed to meet in person at 3:30 p.m. on May 19, 2017 in order to facilitate the above rent payment;
6. Both parties agreed that the tenant's security deposit of \$212.50 will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*;
7. The tenant agreed to notify "THS," the housing society that provides a partial rental subsidy on behalf of the tenant, to cancel their February, March and April 2017 rent subsidy payment cheques issued on behalf of the tenant, which the landlord did not receive;
8. The landlord agreed that this settlement agreement constitutes a final and binding resolution of the landlord's 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.

The landlord confirmed agreement and understanding that this settlement is binding upon the landlord company named in this application. The tenant confirmed that he understood the serious consequences of violating the terms of this settlement. I answered the questions of both parties regarding the above settlement and the enforceability of it and both parties confirmed that they fully understood and agreed to the above terms of their own free will.

Conclusion

This review hearing decision and order of possession replace the previous direct request decision and two-day order of possession, both dated March 21, 2017.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached ten (10) day Order of Possession to be

used by the landlord **only** if the tenant does not abide by conditions #1 or #2 of the above settlement. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible after he does not comply with conditions #1 or #2 of the above agreement. 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. This order replaces the previous direct request two-day order of possession, dated March 21, 2017, which is cancelled and of no force or effect.

In the event that the tenant abides by condition #1 the above settlement, I find that the landlord's 10 Day Notice, dated March 2, 2017, is cancelled and of no force or effect. In that event, this tenancy continues only until 1:00 p.m. on November 30, 2017.

The previous hearing monetary order of \$50.00, dated March 21, 2017, issued to the landlord against the tenant, **is in full force and effect**. That order is for use by the landlord **only** in the event that the tenant does not pay the landlord \$50.00 as per the above agreement. The tenant must be served with a copy of the order as soon as possible after he does not comply with the above agreement. Should the tenant fail to comply with the order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant's security deposit of \$212.50 will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

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 18, 2017

Residential Tenancy Branch