



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, RP, LRE, RR, FFT

Introduction

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

- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Although I obtained the names and contact information for five other individuals who the parties intended to call as witnesses for this hearing, it was not necessary to include these witnesses in this hearing.

Preliminary Matter- Service of Documents

The tenant confirmed that they received the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) placed in the tenant's mailbox by the landlord on August 11, 2020, seeking an end to this tenancy by October 31, 2020. I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant gave sworn testimony that they had not filed an application to cancel

that 2 Month Notice and were planning to vacate the rental property by October 31, 2020.

The landlord confirmed that by approximately August 24, 2020, they had received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 19, 2020. On this basis, I find that that the landlord was duly served with the tenant's dispute resolution hearing package on August 24, 2020, and in accordance with section 89 of the *Act*. As the tenant testified that they had received copies of the landlord's written evidence, I find that this evidence was served in accordance with section 88 of the *Act*.

The tenant said that they provided the landlord with a copy of all of their written evidence by way of a USB, but were uncertain when that occurred. The landlord gave undisputed sworn testimony and provided written evidence that they did not receive the tenant's USB containing the tenant's written evidence until September 17th, 2020. In their written evidence and in their sworn testimony, the landlord maintained that the tenant had not served their written evidence at least 14 days before this hearing. Due to the volume of evidence provided by the tenant, the landlord said that they had not had a proper opportunity to review the tenant's written evidence, nor had the landlord had an opportunity to submit their own written evidence in response to the tenant's claim within the 7 day period required. I advised the parties that the tenant's failure to abide by the service provisions might lead to a finding that the tenant's written evidence had not been served in accordance with the RTB's Rules of Procedure, and might preclude me from considering the tenant's written evidence.

Preliminary Matter – Breakdown of Tenant's Monetary Claim

Since this was a claim for a very significant monetary award, totalling \$30,100.00 and the tenant had submitted many documents, I asked the tenant to identify which of these documents provided a breakdown of how they arrived at the amount they were claiming. I noted that the RTB asks claimants to complete a Monetary Order Worksheet to provide such a breakdown. Although the tenant said that they thought that they had completed a Monetary Order Worksheet and included it in their written evidence, neither the landlord nor I could locate any such document in the tenant's written evidence. The tenant could not direct our attention to any such document within the written evidence they had submitted for this application. The landlord provided written evidence that the only breakdown provided in the past was a Monetary Order Worksheet for a much reduced amount.

At the hearing, I reviewed with the parties the only general breakdown I could locate in the tenant's evidence, the very general statements included in the tenant's application for dispute resolution. There was no itemized breakdown in that application.

Preliminary Matter – Pending End to this Tenancy

At the hearing, the tenant confirmed that they intend to vacate the rental unit by October 31, 2020 because they had not filed an application to cancel the landlord's most recent 2 Month Notice. They said that at the time they completed their current application for dispute resolution they did not believe that they had received the landlord's 2 Month Notice and had not decided to vacate the rental unit. As such, they agreed that issues such as their application to restrict the landlord's right to enter the rental unit, to repair damaged features of the rental unit and to obtain an order requiring the landlord to follow the provisions of their tenancy agreement were no longer issues of primary importance.

The tenant said that they are looking for alternative accommodations, and may decide to issue their own notice to end this tenancy earlier than October 31, 2020, in the event that they find lodging that needs to be occupied sooner than November 1, 2020.

The landlord said that they had no objection to the tenant vacating the rental unit prior to October 31, 2020. The landlord also said that they were allowing the tenant to not pay rent for the month of October 2020, the last month of their tenancy.

Preliminary Matter- Tenant's Withdrawal of Application and Settlement Reached by the Parties with Respect to the End to this Tenancy

After some discussion regarding the problems presented by the tenant's late provision of written evidence to the landlord and the absence of any Monetary Order Worksheet or similar breakdown of the tenant's claim, the tenant withdrew their current application for dispute resolution. There is nothing in the *Act* or the RTB's Rules of Procedure that prevent an applicant from withdrawing their application prior to a decision being made.

In agreeing to their request to withdraw their application, I noted that they could resubmit a new application for dispute resolution, focussing on only those issues that remain of concern to them. However, I emphasized that they need to provide this information to the landlord well in advance of the next hearing and at least 14 days before any such hearing. I also noted that they would be well-advised to provide a breakdown, preferably on a Monetary Order Worksheet, in which they itemize each of

the monetary claims they plan to make. The parties would need to resubmit any documents that they planned to use at a future hearing to the RTB and to one another, as part of any new application that either party plans to make with respect to this tenancy.

At the hearing, I also noted that the only monetary compensation the tenant would be entitled to receive in response to the landlord's 2 Month Notice would be the one month of rent forgiveness that the landlord has committed to provide for the month of October 2020, should they continue to live there for that month.

Near the commencement of this hearing, the landlord stated that they had a hearing scheduled for November 2, 2020 to consider their application to obtain an Order of Possession on the basis of their 2 Month Notice of August 11, 2020 (see file reference above).

Once the tenant advised that that they were withdrawing their application, the landlord asked whether arrangements could be made with the tenant whereby they could agree to end this tenancy by October 31, 2020, and thus eliminate the need to participate in the November 2, 2020 hearing. Since the tenant said that they fully expect to have vacated the rental unit by October 31, 2020, they agreed to the landlord's proposal to enter into a settlement agreement regarding the end of this tenancy by October 3, 2020.

Analysis

The tenant's application is withdrawn.

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 engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their overall dispute, the matter that was to have been considered at the hearing of November 2, 2020.

Both parties agreed to the following final and binding resolution of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on October 31, 2020, 2020, by which time the tenant will have surrendered vacant possession of the rental unit to the landlord.
2. Both parties agreed that this settlement agreement constituted a final and binding resolution of issues currently in dispute arising out of the landlord's 2 Month

Notice of August 11, 2020 and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

The tenant's application is withdrawn. This action does not preclude the tenant from submitting a new application for issues that remain outstanding during the time period permitted pursuant to the *Act*.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with an Order in the event that the tenant does not vacate the premises by the time and date set out in their 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 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: September 28, 2020

Residential Tenancy Branch