



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNRL, FFL

### **Introduction**

This matter involves a landlord's claim for compensation – specifically, for two months of unpaid rent – arising from a tenancy that ended some time ago.

The present application was brought after an arbitrator's decision dated March 14, 2021 (the "Decision") along with three other decisions by the Residential Tenancy Branch related to this tenancy were judicially reviewed. The Honourable Madam Justice D. MacDonald rendered her decision in that review in *Kong v. Lee*, 2021 BCSC 606.

In her reasons for judgment dated April 1, 2021 Justice MacDonald held that a portion of the Decision was patently unreasonable and was returned for consideration in accordance with the reasons. The portion of the Decision found to be patently unreasonable was the arbitrator's granting of two months' rent to the landlord, for September and October 2018, which Justice MacDonald held was not sufficiently reasoned in the Decision. The order of Justice MacDonald, in essence, finds that the Decision is patently unreasonable only as it relates to the two months of rent for September and October 2018. (reproduced from landlord's counsel's written submission). It is this aspect of the Decision that is returned to the Residential Tenancy Branch for consideration.

Attending the hearing before me on October 22, 2021 were the landlord's counsel, the landlord's agent, the tenant, and the tenant's articling student.

### **Issue**

Is the landlord entitled to compensation?

## Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

It was agreed by the parties that the only issue before me is whether the landlord is entitled to compensation equivalent to two months' worth of rent for September and October 2018. Monthly rent was \$1,350.00. The tenancy began on June 1, 2017 and ended on December 9, 2018. The parties agree that the tenant is otherwise liable for the remainder of the rent, exclusive of whether the two months are awarded.

## **Landlord's Submission**

For brevity and in an effort to ensure an accurate recording of the parties' positions on the very narrow legal issue to be decided, portions of landlord's counsel's written submissions will be reproduced (with minor formatting and editing in places) below.

The landlord is seeking monetary compensation for \$2,700.00 for two months' worth of unpaid rent from the tenant, and the present proceeding is for a total of \$5,360.00. This total amount represents the amount claimed after two deductions are made and include the \$50.00 application filing fee. Whether the landlord is entitled to those two months' unpaid rent hinges entirely on how an agreement is to be interpreted. That agreement is in the form of a letter.

In the letter dated September 21, 2018, from the landlord's agent to the tenant, the landlord's agent writes as follows:

Enclosed is the 10 day notice for unpaid rent the notice gives 5 days to pay. Should you exercise your right to dispute this notice all addressed paper work will be to the owner Mr. Vincent Lee C/O our remax office address.

We have provided an alternate option for you which includes as mutual agreement to end tenancy on October 31st with not rent due for Sept or October. This generous offer is from Mr. Lee to give you time and funds to find alternate accommodations since you have expressed your concern for your safety in this particular building and city of Pitt Meadows. The amount is 2700.00 and is all Mr

Lee will be offering at this time. Should you wish to stay in this unit rent is due within the 5 day period on the notice.

In the best interest of all parties we feel the mutual agreement to end tenancy and TWO free months is the best option for all parties.

The arbitrator found that the tenant was liable for the two months' rent, but Madam Justice MacDonald found that the arbitrator failed to properly explain her analysis:

[97] However, I find that the Arbitrator's reasoning with respect to the two months' free rent as detailed in the September 21, 2018 letter is inadequate. Even applying the rigorous patently unreasonable standard, it is clear that the Arbitrator failed to grapple with the proper factors, including what bargain was struck between the parties on September 21, 2018. In the absence of any analysis on this point in the Arbitrator's reasons, I am unable to understand how the Arbitrator concluded the two months' free rent was contingent on the petitioner not only signing the Mutual Agreement but also on moving out of the unit on October 31, 2018. This inadequate analysis renders the decision, with respect to the amount of rent the petitioner must pay to the landlord, patently unreasonable: Ganitano at para. 24; Laverdure at para. 37; Guevera at para. 48.

And, of particular importance, is the following at paragraph 103:

This lack of analysis on a central issue— the terms of the agreement struck between the parties on September 21, 2018 which included, at minimum, some discussion of two months' free rent and the signing of the Mutual Agreement— renders the reasons inadequate and this aspect of the decision patently unreasonable.

The legal test referred to by her Ladyship at para. 108 is derived from *Hatton v. Leahy*, 2010 BCCA 290 at para. 11, which states that “[a] contract is composed of the terms agreed upon between the parties to constitute their bargain.”

It is the landlord's submission that the bargain struck between the parties on September 21, 2018, was that the landlord would not pursue the tenant's eviction for unpaid rent for September 2018 through the Second Eviction Notice and would also provide the tenant with free rent for October 2018, if the tenant agreed to vacate the unit on (or before) October 31, 2018.

Moreover, the bargain is evidenced by the landlord's agent writing an email to the tenant on September 20, 2018 stating that "we expect rent to be paid in full immediately to avoid eviction" and "a new 10 day notice will be brought to the unit if rent is not paid by the end of the day today [ . . . ]". Similarly, in the September 21, 2018 letter, the Landlord's agent reiterated that "should you wish to stay in this unit rent is due within the 5 day period on the notice".

The bargain therefore was that the tenant either stay and pay all rent due, or, sign the mutual agreement to end tenancy, not pay rent for September or October, and move out by October 31, 2018.

### **Tenant's Submission and Argument**

Tenant's articling student argued that the letter offered two months of free rent, and the tenant signed that letter. They argued that the landlord *did* receive a full bargain in this case, and that consideration was that the tenant vacates the rental unit. Which he ultimately did, albeit after October 31, 2018.

### **Analysis**

Having carefully considered the arguments and submissions made by both sides, I find that the landlord is entitled to compensation for the two months in question.

A careful review of the communication between the parties, which is contained in the above-noted exchange, and is worth repeating here, is this:

We have provided an alternate option for you which includes as mutual agreement to end tenancy on October 31st with not rent due for Sept or October. This generous offer is from Mr. Lee to give you time and funds to find alternate accommodations since you have expressed your concern for your safety in this particular building and city of Pitt Meadows. The amount is 2700.00 and is all Mr Lee will be offering at this time. Should you wish to stay in this unit rent is due within the 5 day period on the notice.

The bargain, or agreement (because it appears that the landlord offered options in exchange for the tenant's acceptance) was that the tenant EITHER (A) stay and pay all rent due OR (B) sign the mutual agreement to end tenancy, not pay rent for September or October, AND move out of the rental unit. There is, of course, at the core of the

agreement a decision-making tree of logic: If A then B. If not A then C. Or, to put in other terms, if move out by x date then no rent, if not move out by x date then rent.

Given the facts of the case, which is that the tenant did not move out by x date, it therefore follows, both in law (and in logic), that the tenant owes rent. To interpret the agreement such that the tenant somehow got to remain in the rental past October 31, 2018, and then reap the benefit that he would have only otherwise received had he left by October 31, defies logic. With respect to the articling student's argument, I am not persuaded that the landlord still obtained the full benefit of the deal when the tenant chose to exercise one part of the deal but not the other on which performance would have resulted in free rent. The offer to remain in the rental unit beyond October 31 without having to pay rent did not exist.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I must find on a balance of probabilities that the landlord has met the onus of proving their claim for the two months' of unpaid rent in the amount of \$2,700.00.

As the landlord succeeded in their application, they are further awarded \$100.00 to cover the cost of the application filing fee, pursuant to section 72 of the Act.

### Conclusion

The landlord's application is granted. The landlord is granted a monetary award in the amount of \$5,460.00. This amount includes the \$100.00 filing fee for this application.

A copy of the monetary order is issued in conjunction with this decision, to the landlord.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 27, 2021