



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDCT, LAT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated June 25, 2021 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation of \$35,000.00 under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to change the locks to the rental unit, pursuant to section 70.

The landlord's three agents, landlord CI ("landlord"), "landlord JP," and "landlord LF," and the tenant, the "tenant's advocate" WP and the "tenant's agent" EP 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 tenant intended to call a witness, who was excluded from the outset of this hearing. The witness did not return to testify at this hearing.

The landlord confirmed that he was a property manager, landlord LF confirmed that she was a property manager, and landlord JP confirmed that she was a building manager. All three landlord agents confirmed that they had permission to represent the landlord company named in this application at this hearing. The landlord confirmed that the landlord company is an agent for the owner of the rental unit. All three landlord agents confirmed that they had permission to represent the owner at this hearing.

The tenant confirmed that his advocate and agent both had permission to represent him at this hearing. He said that they were both his brothers. He said that his agent would not be speaking at this hearing, he was only there to observe.

At the outset of this hearing, I informed both parties that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”). The landlord’s three agents, the tenant, the tenant’s advocate, and the tenant’s agent, all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing, they wanted to settle this application, and they did not want me to make a decision.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package and the tenant’s late evidence from October 20, 2021, and the tenant confirmed receipt of the landlord’s evidence. 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 late evidence and the tenant was duly served with the landlord’s evidence.

The tenant stated that he received the landlord’s evidence late on October 5 and 22, 2021 and he did not have time to submit it to his advocate to review. I informed him that in accordance with Rule 3.15 of the RTB *Rules*, the landlord’s evidence, as the respondent, was not late, since it was received by the tenant at least 7 days prior to this hearing on November 1, 2021, not including the service or hearing dates.

I was not required to consider the landlord’s evidence or the tenant’s late evidence at this hearing or in my decision, as both parties voluntarily settled this application, except for the tenant’s monetary application, which was dismissed with leave to reapply.

Preliminary Issue – Conduct of Tenant and Identification of People at Hearing

During this hearing, I repeatedly asked the tenant, his agent, his advocate, and his witness to identify themselves and their roles at this hearing. They all insisted that this was a public hearing in a Court, where anyone could participate and be present to observe.

I repeatedly informed them that this was not a Court and that only parties, their agents, and advocates could participate in this hearing. I notified them that witnesses would be excluded from the outset and they could return later to testify. I informed them that the general public could not participate in this hearing, as it was a teleconference, where the parties were provided with the access code to participate.

The following RTB *Rules* are applicable to this hearing (my emphasis added):

6.7 Party may be represented or assisted

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make their presentation.

6.8 Proof of authority to act

The arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.

7.6 Identification of people present at a dispute resolution hearing

Each participant must identify all people who are present with them at the start and anyone who joins them at any time during a hearing.

7.20 Exclusion of witnesses and others

The arbitrator may exclude witnesses from the dispute resolution hearing until called to give evidence.

The arbitrator may, when they consider it appropriate to do so, exclude any other person from the dispute resolution hearing.

Throughout this hearing, I was required to caution the tenant, who repeatedly interrupted me while I was speaking. Rule 6.10 of the RTB *Rules* states the following (my emphasis added):

6.10 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.

Preliminary Issue – Severing the Tenant's Monetary Application

The following RTB *Rules* are applicable and state (my emphasis added):

2.3 Related issues

*Claims made in the application must be related to each other. **Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.***

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application** and the arbitrator may dismiss such matters with or without leave to reapply.*

At the outset of this hearing, I informed both parties that Rule 2.3 of the RTB *Rules of Procedure* allows me to sever issues that are not related to the tenant's main urgent application. The tenant applied for three different claims in his application. At the hearing, both parties were able to settle two of the tenant's three claims. The tenant said that he did not want to settle his monetary claim for \$35,000.00, despite being provided with an opportunity to do so.

I informed the tenant that he provided a 58-page evidence package late on October 20, 2021, less than 14 days prior to this hearing on November 1, 2021, not including the service and hearing dates, contrary to Rule 3.14 of the RTB *Rules*. The landlord confirmed that this evidence was received late from the tenant.

The tenant was provided with a priority hearing date, due to the urgent nature of his application to cancel the landlord's 1 Month Notice and authorization to change the locks to the rental unit. I informed the tenant that these were the central, and most important, urgent issues to be dealt with at this hearing. After 37 minutes in this hearing, there was insufficient time to deal with the tenant's voluminous monetary claim for \$35,000.00.

Therefore, I notified the tenant that his monetary application for \$35,000.00 was dismissed with leave to reapply. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenant confirmed his understanding of same.

Settlement Terms

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, except for the tenant's monetary application.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the tenant's monetary application:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on January 31, 2022, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that the landlord's 10 Day Notice, dated June 25, 2021, was cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for his monetary application.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the tenant's monetary application. 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, except for the tenant's monetary application.

During this hearing, I repeatedly confirmed the above settlement terms with both parties. Both parties repeatedly affirmed, under oath, that they were voluntarily agreeing to the above settlement terms and they understood they were legal, binding, and enforceable. Both parties repeatedly affirmed, under oath, that they agreed and understood that they could not change the settlement terms after the hearing was over and they knew it was a full and final settlement of this application.

The tenant was given ample time to discuss and review the terms of this settlement with his advocate and agent during this hearing, and he could be heard talking to them during this hearing. The tenant affirmed, under oath, that he discussed and reviewed the above settlement terms with the assistance of his advocate and agent during this hearing.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this 37-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. Both parties affirmed under oath that they fully understood the above settlement terms and were agreeable to them.

Both parties agreed to meet after this hearing, in order to discuss and view the tenant's locks on his front and back doors and the use of his patio door. Both parties agreed they did not need to include this term in the settlement agreement above.

Conclusion

I order both parties to comply with all of the above settlement terms. The landlord's 1 Month Notice, dated June 25, 2021, is cancelled and of no force or effect.

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue the attached Order of Possession effective at 1:00 p.m. on January 31, 2022, to be used by the landlord **only** if the tenant does not abide by condition #1 of the above settlement. The tenant must be served with this Order. 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.

The tenant's application for a monetary order for compensation of \$35,000.00 under the *Act, Regulation* or tenancy agreement, is dismissed with 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: November 01, 2021

Residential Tenancy Branch