



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, LRE, CNR, LAT, FFT; CNR, MNDCT, OLC, LRE, FFT;
LAT, LRE, OLC, FFT; CNC, OLC, LAT, LRE, FFT

Introduction

This hearing dealt with the tenant's first application, filed on October 14, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order regarding a disputed additional rent increase of \$158.00, pursuant to section 43;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("first 10 Day Notice"), pursuant to section 46;
- authorization to change the locks to the rental unit, pursuant to section 70;
- authorization to recover the \$100.00 filing fee paid for the application, pursuant to section 72.

This hearing dealt with the tenant's second application, filed on January 6, 2022, pursuant to the *Act* for:

- cancellation of the landlord's second 10 Day Notice, pursuant to section 46;
- a monetary order of \$1,848.00 for compensation under the *Act*, *Residential Tenancy Regulation* ("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 restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to recover the \$100.00 filing fee paid for the application, pursuant to section 72.

This hearing dealt with the tenant's third application, filed on December 4, 2021, pursuant to the *Act* for:

- authorization to change the locks to the rental unit, pursuant to section 70;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement, pursuant to section 62;
- authorization to recover the \$100.00 filing fee paid for the application, pursuant to section 72.

This hearing dealt with the tenant's fourth application, filed on November 18, 2021, pursuant to the *Act* for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement, pursuant to section 62;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to recover the \$100.00 filing fee paid for the application, pursuant to section 72.

The landlord, the landlord's English language translator, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 90 minutes.

The hearing began at 11:00 a.m. with me, the landlord, and the landlord's agent present. The tenant called in late at 11:19 a.m., stating that someone "hacked" her "wifi and technology," so she had trouble calling into the hearing. I informed the tenant about what occurred in her absence. The hearing ended at 12:30 p.m.

The landlord, the landlord's agent, and the tenant confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to them after the hearing.

The landlord stated that she owns the rental unit and confirmed the rental unit address. She said that her translator, who is her boyfriend, had permission to assist her at this hearing.

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, the landlord’s translator, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The tenant filed four separate applications, which were all joined to be heard together at the same time, at this hearing.

The landlord confirmed receipt of the tenant’s first and fourth applications for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s first and fourth applications.

The tenant did not have all of her applications and file numbers in front of her during this hearing. She was unable to confirm all of the details, despite the fact that I provided her with extra and ample time during this hearing, to do so. However, both parties voluntarily agreed to settle all four of the tenant’s applications at this hearing, except for the tenant’s monetary claim for \$1,200.00, which I made a decision about.

The tenant stated that she was not disputing the landlord’s legal rent increase and she was not pursuing her monetary claim of \$158.00 total. I informed the tenant that this portion of her first application was dismissed without leave to reapply. She confirmed her understanding of same.

During this hearing, the tenant confirmed that her monetary claim of \$1,848.00 in her second application was for the return of her security deposit of \$600.00 and an overpayment of rent of \$1,200.00, not \$1,248.00, as she originally claimed in error. Both parties agreed to settle the security deposit issue at this hearing, as noted below. I have decided the tenant’s monetary application for \$1,200.00, as noted below, since both parties were unable to settle this issue.

Both parties were unable to settle the landlord's claim for unpaid utilities at this hearing. Section 55(4)(b) of the *Act* only allows me to deal with the landlord's claim for unpaid rent pursuant to a 10 Day Notice, not for unpaid utilities, without the landlord filing a separate application. Therefore, I have not made a decision regarding utilities at this hearing. The landlord is at liberty to file a future RTB application for a monetary order for unpaid utilities, if she wants to do so, as none was filed by her at this hearing.

Preliminary Issue – Inappropriate Behaviour by the Tenant during this Hearing

Rule 6.10 of the RTB *Rules* states the following:

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.

Throughout this hearing, the tenant repeatedly interrupted me, argued with me, and refused to answer my questions. I repeatedly cautioned the tenant, but she continued with her inappropriate behaviour.

The tenant did not have all four of her applications or evidence in front of her during this hearing. I repeatedly informed the tenant that I was providing her with additional time during this hearing, in order to log into her account, look up her documents online, and provide me with the document names, information, and references.

During this hearing, the tenant informed me that she was looking up information on her laptop in her home. She later claimed that she did not have access to her laptop because she left her home during this hearing. She explained that she was inside her car, so that she could "go to the mall" and "return a few items."

I informed the tenant that this was a serious legal proceeding and that I would be making a final, binding decision and enforcing a settlement, by way of Court orders. I notified the tenant that she was required to fully participate in this hearing with all of her applications and evidence in front of her. The tenant responded that she was concerned about returning her items to the mall.

This hearing lasted 90 minutes because of the tenants' repeated interruptions, arguments, and inappropriate behaviour.

However, I allowed the tenant to attend the full hearing, despite her inappropriate behaviour, in order to allow her to engage in settlement negotiations with the landlord and present her submissions regarding her monetary application.

Settlement of End of Tenancy Issue

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, engaged in a conversation, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 15, 2022, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed that all of her notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect;
3. The tenant agreed that she owes unpaid rent of \$2,298.40 (including \$999.20 for January 2022 and \$1,299.20 for February 2022) to the landlord, for the period from January 1 to February 28, 2022;
4. The tenant agreed to pay the landlord \$649.60 total, which the landlord agreed to accept as pro-rated rent, for the period from March 1 to 15, 2022;
5. The landlord agreed that she will not file any future claims or applications against the tenant for unpaid rent, for the period from March 16 to 31, 2022, provided that the tenant and any other occupants vacate the rental unit by March 15, 2022;
6. Both parties agreed that the tenant's security deposit of \$600.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*;
7. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing, except for her monetary claims.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed 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 and binding and enforceable, which settles a portion of this dispute.

Both parties were unable to settle the tenant's monetary claim of \$1,200.00 and the four application filing fees, totalling \$400.00. The tenant asked that I make a decision about the above claims. Below are my findings.

Issues to be Decided

Is the tenant entitled to a monetary order of \$1,200.00 for compensation under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to recover the four filing fees, totalling \$400.00, that she paid for all four applications?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. Monthly rent in the current amount of \$1,299.20 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing.

The landlord stated that this tenancy began on May 29, 2017. The tenant stated that this tenancy began in May 2017.

The tenant seeks monetary compensation of \$1,200.00 and recovery of the four filing fees totalling \$400.00, that she paid for all four applications. The landlord disputes the tenant's monetary claims.

The tenant testified regarding the following facts. She overpaid rent to the landlord for one month, in the amount of \$1,200.00, in May 2017 when she moved in. The landlord told the tenant to pay an extra month of rent and said she would return it to the tenant later. The tenant did not file an application for the above claim because she "forgot" that she paid the extra rent, until this dispute arose, and the landlord was trying to end her

tenancy. The tenant “forgot” about this claim until her sister reminded her. The tenant “forgot” that the rent was actually \$1,200.00 in the year 2017, not \$1,248.00, as she originally claimed in this application. The tenant has proof of payment but could not find the document or the document name, in order to refer me to it, during this hearing.

The landlord testified regarding the following facts. She did not request that the tenant pay her an extra month of rent, since this is illegal to do. The tenant never paid the landlord an extra month of rent of \$1,200.00. The tenant first claimed that the landlord owed her \$1,248.00, and now changed the information to state that the amount is \$1,200.00.

Analysis

Credibility

I found the landlord to be a more credible witness than the tenant. The landlord provided her testimony in a calm, candid, straightforward and consistent manner. She answered my questions directly and she did not argue with or interrupt me or the tenant, while we were speaking. Her testimony was consistent and did not change throughout this hearing.

Conversely, the tenant provided her testimony in an upset, agitated, and inconsistent manner. Her testimony frequently changed throughout this hearing. She did not answer my questions directly, she became upset and argued when I asked her questions, and she frequently interrupted me and the landlord while we were speaking.

Monetary Claim

The following RTB *Rules of Procedure* are applicable and state the following, in part:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent...

...

7.17 Presentation of evidence

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...

7.18 Order of presentation

The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...

The tenant, as the applicant, has the burden of proof on a balance of probabilities, to prove her monetary claim. I find that the tenant did not properly present her claim and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 90 minutes so the tenant had ample opportunity to present her application and respond to the landlord's claims. However, the tenant failed to go through her numerous documents that were submitted for this hearing. During this hearing, I repeatedly asked the tenant if she had any other information to present and to respond to the landlord's claims. I even referenced the tenants' documents repeatedly and asked about them, but the tenant failed to go through same.

As noted above, the tenant did not have all of her applications or documents in front of her during this hearing. Also noted above, I provided the tenant with multiple opportunities to look up her documents and provide me with references to same. During this hearing, as noted above, the tenant stated that she left her home and laptop, went to her car, and intended to drive to the mall because she was concerned about returning her items. The tenant was more focussed on going to the mall, rather than attending this hearing, providing her testimony, referencing her documents, and responding to the landlord's claims.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and

- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$1,200.00, without leave to reapply. I find that the tenant failed all four parts of the above test.

I find that the tenant failed to provide sufficient documentary evidence of the \$1,200.00 amount. She said that she provided proof, but she did not know the name of her document or the location of her document, to refer me to same. The tenant could not find her document during this hearing, despite me providing her with additional time to do so. The tenant did not provide any testimony during this hearing, about what her document stated, the date of the document, or other details about the document.

I find that the tenant failed to provide sufficient documentary, witness, or testimonial evidence that she was required to pay \$1,200.00 to the landlord for an extra month of rent or that the landlord agreed to return this amount to the tenant. The landlord disputed this claim made by the tenant during this hearing, stating that she did not request this amount, nor did she receive it from the tenant.

I find that the tenant's testimony about her \$1,200.00 claim is not credible. The tenant frequently changed her testimony about this claim, throughout this hearing.

The tenant initially stated that she paid \$1,248.00 for an extra month of rent to the landlord and that she provided documentary proof of same. The tenant also indicated this in her original application. I asked the tenant why she paid \$1,248.00, when the rent was initially \$1,200.00 when she began her tenancy in 2017, as per the parties' written tenancy agreement that was provided for this hearing. The tenant then changed her testimony and said that she "forgot" that the rent was actually \$1,200.00 at that time, so that is the amount she paid.

I find that the tenant failed to provide sufficient evidence that she informed the landlord that she disputed this cost or that she requested this cost back from the landlord. The tenant initially testified that she "forgot" about this cost until this dispute arose, and the landlord was attempting to end her tenancy. The tenant then claimed that she "forgot" about this cost until her sister reminded her about it.

Filing Fees

The tenant's applications to recover four filing fees totalling \$400.00, is dismissed without leave to reapply.

The filing fee is a discretionary award, awarded by an Arbitrator, usually when an applicant party is successful in an application, after a full hearing is conducted and a decision is made on the merits of the application.

In this case, the tenant was unsuccessful in her monetary application for \$1,200.00, as noted above, after I conducted a hearing and decided the merits of that claim. The remainder of the claims in the tenant's four applications were voluntarily settled by both parties at this hearing. Therefore, I find that the tenant is not entitled to recover her four application filing fees from the landlord.

I also find that the tenant was not required to file four separate applications for this hearing. The tenant repeatedly asked for the same claims in all four applications. The tenant could have filed one application and amended it prior to this hearing, in order to add additional claims. I questioned the tenant as to why she filed four separate applications, rather than amending her first application to add the additional claims. The tenant said that someone "hacked" her "wifi and technology" and her evidence disappeared from the online RTB system. I informed the tenant that her evidence did not "disappear" from her applications. The tenant agreed that she was informed by an RTB information officer, prior to this hearing, that her evidence was not "deleted" as she claimed, when she called the RTB on February 10, 2022.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during this hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on March 15, 2022. 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.

All of the landlord's notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect.

To give effect to the settlement reached between the parties and as advised to both parties during this hearing, I issue a monetary Order in the landlord's favour in the amount of \$2,298.40, the current amount of rent owing for this tenancy. The tenant must be served with this Order. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I order the tenant to pay prorated rent of \$649.60 total to the landlord, for the period from March 1 to 15, 2022. If the tenant fails to pay same, the landlord is at liberty to file a future monetary application at the RTB.

The tenant's security deposit of \$600.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

The remaining claims in the tenant's four applications, are dismissed without 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: February 28, 2022

Residential Tenancy Branch