



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes CNC, OLC, LRE, FFT

Introduction

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

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated October 22, 2021 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

"Landlord KD" and the "male tenant" did not attend this hearing, which lasted approximately 38 minutes. Landlord PD ("landlord") and the female tenant ("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 began at 9:30 a.m. and ended at 10:08 a.m. The tenant intentionally disconnected from this hearing at 10:07 a.m.

Two witnesses called in on behalf of the landlord. They provided their names and spelling, which are contained on the cover page of this decision. They were excluded from the outset of this hearing and did not return to testify. They exited the teleconference at approximately 9:34 a.m.

The tenant stated that one witness was present in the room with her, at the outset of this hearing. Neither the tenant, nor her witness, provided the name or spelling of the witness. This person is referred to as “unidentified witness” on the cover page of this decision. The tenant stated that her witness exited the room at approximately 9:35 a.m. The tenant’s witness did not testify at this hearing.

The landlord and the tenant confirmed their names and spelling. They provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that he had permission to represent landlord KD, who is his father, at this hearing (collectively “landlords”). He said that both his parents are co-owners of the rental unit. He stated that he also had permission to represent his mother at this hearing. He confirmed the rental unit address.

The tenant stated that she had permission to make this settlement agreement on behalf of the male tenant at this hearing (collectively “tenants”).

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 *Rules of Procedure*. The landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

At the outset of this hearing, I introduced myself as the Arbitrator and provided my surname to both parties. I informed them that my surname would be included on the written decision sent to both parties after this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* 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.

The tenant was angry, upset, argumentative, and inappropriate during this entire hearing. She repeatedly interrupted and argued with me and the landlord, while we were speaking, throughout this hearing. She stated that she was being “sarcastic” when responding to my questions during this hearing. The tenant was laughing and could be heard talking to someone else near her, during this hearing.

I repeatedly cautioned the tenant to stop her inappropriate behaviour, or she would be excluded from this hearing, and it would continue in her absence. The tenant continued with her inappropriate behaviour, despite my repeated warnings. However, I allowed the tenant to attend the full hearing, despite her inappropriate behaviour, in order to provide her with a full opportunity to settle this application, as she requested to do so.

I caution the tenant to not to engage in the same behaviour at any future hearings at the RTB, as this behaviour will not be tolerated, and she may be excluded from future hearings. In that case, a decision will be made in the absence of the tenant.

Preliminary Issue - Previous Hearings and Service of Documents

This matter was previously heard by a different Arbitrator on December 16, 2021, and a decision was issued on December 20, 2021 (“first hearing” and “original decision”). The tenants did not attend the first hearing, only the landlord attended with three witnesses. The original decision granted a two-day order of possession to the landlords (“original order of possession”).

The tenants applied for a review of the original decision and a second hearing (this current review hearing on February 15, 2022) was granted by a different Arbitrator, pursuant to a “review decision,” dated January 5, 2022.

By way of the review decision, the tenants were required to serve the landlords with a copy of the review decision and the notice of review hearing, within three days of receiving the review decision.

The tenant stated that she served the review decision and notice of review hearing to the two landlords on December 25, 2021. She then claimed it was December 28, 2021. She later claimed it was November 8, 2021. The tenant repeatedly indicated that she was sure that the mailing occurred on November 8, 2021, despite her previous answers for December 25 and 28, 2021.

The tenant provided two Canada Post tracking numbers verbally during this hearing, which she claimed were for the November 8, 2021 mailing. When I checked both Canada Post tracking numbers provided by the tenant, online on the Canada Post website, they both indicated that mail was sent out on November 6, 2021, not any of the dates mentioned by the tenant above. I notified the tenant about the above, during this hearing.

The landlord stated that neither he, nor landlord KD, received a copy of the above documents from the tenants. He said that he received a courtesy copy of the review decision from the RTB and an email reminder from the RTB to attend this review hearing. He claimed that after receiving the email reminder, he called the RTB on the morning of this hearing on February 15, 2022, approximately a half hour prior, and obtained a phone number and access code to call into this hearing.

Accordingly, I find that the landlords were not served, as per section 89 of the *Act*, with the review decision or notice of review hearing, as required by the tenants. The tenant provided three dates of December 25, December 28, and November 6, 2021, which are all prior to when the review decision (dated January 5, 2022) and notice of review hearing (dated January 6, 2022) were issued to the tenants.

The review decision stated clearly that the above documents were required to be served by the review applicant (tenants) to the review respondent (landlords). I informed both parties of my above decision verbally during this hearing.

During this hearing, I notified both parties that a party may only apply once for a review consideration, which has already been completed by the tenants.

Section 79(7) of the *Act* states the following:

(7) A party to a dispute resolution proceeding may make an application under this section only once in respect of the proceedings.

When I provided the above information to both parties, the tenant stated that she wanted to settle this application with the landlord. The landlord stated that he was agreeable to settling this application with the tenant.

Based on the consent of both parties, I provided them with a full opportunity to discuss settlement and recorded their agreed settlement terms in this decision.

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 and arising out of this tenancy.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time and arising out of this tenancy:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on March 15, 2022, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlords agreed that their 1 Month Notice, dated October 22, 2021, was cancelled and of no force or effect;
3. The tenants agreed to bear the cost of the \$100.00 filing fee paid for this application;
4. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy. 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, binding and enforceable, which settle all aspects of this dispute and arising out of this tenancy.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 38-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. The tenant was given ample time to think about these settlement terms privately and to discuss and review them, as she could be heard talking to someone else near her about the move-out date, during this hearing. The tenant affirmed that she had permission to make this settlement agreement on behalf of the male tenant and that he would move out on the date agreed above. The landlord was given ample time to think about these settlement terms privately and to discuss and review them during this hearing.

Original Decision and Order

Section 82(3) of the *Act* states:

Following the review, the director may confirm, vary or set aside the original decision or order.

I set aside the original decision and original two-day order of possession, both dated December 20, 2021. I issue a new order of possession, effective at 1:00 p.m. on March 15, 2022, to the landlords against the tenants. I informed both parties of the above information during this hearing and they confirmed their understanding of and agreement to same.

Conclusion

The original decision and original two-day order of possession, both dated December 20, 2021, are set aside.

I issue a new order of possession, effective at 1:00 p.m. on March 15, 2022, to the landlords against the tenants.

I order both parties to comply with all of the above settlement terms.

The landlords' 1 Month Notice, dated October 22, 2021, is cancelled and of no force or effect.

The tenants must bear the cost of the \$100.00 filing fee paid for this application.

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 15, 2022

Residential Tenancy Branch