Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, LRE, OLC, MNDCT, FFT

Introduction

This hearing dealt with the tenants' application, filed on October 26, 2021, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- 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, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for $28,416.00 for compensation under the *Act, Regulation* or tenancy agreement, pursuant to section 67;
- authorization to recover the $100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent, the landlord's lawyer, the two tenants ("male tenant" and "female tenant"), and the tenants' lawyer 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 17 minutes.

All hearing participants confirmed their names and spelling. The landlord's lawyer and the male tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord's agent stated that she was the daughter of the landlord named in this application. She said that she had permission to speak on the landlord's behalf. She confirmed that the landlord's lawyer had permission to represent her and the landlord at this hearing.

The female tenant confirmed that the male tenant had permission to speak on her behalf at this hearing (collectively "tenants"). Both tenants confirmed that their lawyer had permission to speak on their behalf at this hearing.

The male tenant and the landlord's lawyer identified themselves as the primary speakers 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")*. All hearing participants separately affirmed that they would not record this hearing.

At the outset of this hearing, I explained the hearing process to both parties. Both parties had an opportunity to ask questions, which I answered. I informed both parties that I could not provide legal advice to them. Neither party made any adjournment or accommodation requests.

During this hearing, the male tenant confirmed that the tenants can receive mail, including RTB and tenancy-related documents from the landlord, at the address that he confirmed during this hearing, which is contained on the front page of this decision. The male tenant confirmed that the tenants amended this application to include this new mailing address.

At the outset of this hearing, the male tenant confirmed that the tenants vacated the rental unit on December 3, 2021. He said that the tenants did not require any claims in their application, aside from their monetary order. I notified the tenants that their entire application, except for their monetary order, was dismissed without leave to reapply. They confirmed their understanding of same.

The male tenant claimed that the tenants initially applied for a monetary order of $28,416.00. He said that the tenants provided a new monetary order worksheet to increase their monetary claim to $33,296.00 on February 18, 2022. He stated that the tenants did not file an amendment to increase their monetary claim. He confirmed that

the tenants are aware of how to file an amendment because they did so on February 15, 2022, to change their mailing address.

I informed the tenants that they submitted late evidence on March 3 and 4, 2022, less than 14 days prior to this hearing on March 8, 2022, contrary to Rule 3.14 of the RTB *Rules.* The tenants submitted other documents between February 15 and 25, 2022, shortly before this hearing on March 8, 2022, contrary to Rule 3.1 of the RTB *Rules*.

I informed the tenants that they were required to serve the landlord and the RTB with their evidence, within 3 days of the application package being made available to them by the RTB, as per Rule 3.1 of the RTB *Rules.* I notified them that they were required to serve any further evidence, no later than 14 days prior to this hearing, as per Rule 3.14 of the RTB *Rules.*

I informed both parties about the following applicable *Rules*, during this hearing (my emphasis added):

> ***2.5 Documents that must be submitted with an Application for Dispute Resolution***
> *To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:*
>
> > *• **a detailed calculation of any monetary claim being made;***
> > *• a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
> > *• **copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17** [Consideration of new and relevant evidence].*
>
> *When submitting applications using the Online Application for Dispute Resolution, the **applicant must upload the required documents with the application or submit them to the Residential Tenancy Branch directly or through a Service BC Office within three days of submitting the Online Application** for Dispute Resolution.*
>
> ***3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package***
> ***The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent** with copies of all of the following:*

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
b) the Respondent Instructions for Dispute Resolution;
c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
d) any other evidence submitted to the Residential Tenancy Branch *directly or through a Service BC Office with the Application for Dispute Resolution,* ***in accordance with Rule 2.5*** *[Documents that must be submitted with an Application for Dispute Resolution].*

See Rule 10 for documents that must be served with the Notice of Dispute Resolution Proceeding Package for an Expedited Hearing and the timeframe for doing so.

3.11 Unreasonable delay
Evidence must be served and submitted as soon as reasonably possible. If the ***arbitrator determines that a party unreasonably delayed the service of evidence, the arbitrator may refuse to consider the evidence.***

3.14 Evidence not submitted at the time of Application for Dispute Resolution
Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office ***not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.***

3.17 Consideration of new and relevant evidence
Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 *[Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10* ***may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.***

> ***The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.***
>
> *Both parties must have the opportunity to be heard on the question of accepting late evidence.*
>
> *If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].*

Preliminary Issue – Severing the Tenants' 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 tenants' main urgent application.

The tenants applied for six different claims in this application. Five of the six claims were dismissed without leave to reapply at this hearing.

I informed the tenants that they were provided with a priority hearing date, due to the urgent nature of their application to cancel the 10 Day Notice, change the locks, an order to comply, and an order to restrict the landlord's right to enter. I informed them that these were the central and most important, urgent issues to be dealt with at this hearing.

Both parties submitted voluminous documents as evidence for this hearing, regarding the tenants' monetary application.

I notified the tenants that their monetary application for $28,416.00 was dismissed with leave to reapply. I informed them that they received a priority hearing date for four of their six issues, as noted above. I notified them as their monetary claim was a non-urgent lower priority issue, and it could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. The tenants confirmed their understanding of same.

I notified the tenants that they could file a new application and pay a new filing fee, if they want to pursue their monetary claim in the future. They confirmed their understanding of same.

Filing Fee

I informed the tenants that their application to recover the $100.00 filing fee was dismissed without leave to reapply. The filing fee is a discretionary award usually issued by an Arbitrator after an applicant party is fully successful after a full hearing on the merits of their application and a decision is made by an Arbitrator.

I was not required to make a decision or conduct a full hearing on the merits of the tenants' application. I notified the tenants that they moved out of the rental unit on December 3, 2021, after filing this application on October 26, 2021.

Five of the tenants' six claims were dismissed without leave to reapply at this hearing. I informed the tenants that only one of their claims, for a monetary order, was dismissed with leave to reapply.

Conclusion

The tenants' application for a monetary order for $28,416.00 is dismissed with leave to reapply.

The remainder of the tenants' application is 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: March 08, 2022

Residential Tenancy Branch