



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's application, filed on August 23, 2021, pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order of \$14,700.00 for 12 months' rent compensation from the landlord related to a Two Month Notice to End Tenancy for Landlord's Use of Property, dated February 1, 2021 ("2 Month Notice"), pursuant to section 51;
- a monetary order of \$2,400.00 for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement for a disputed rent increase, pursuant to sections 43 and 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The tenant, the tenant's advocate, the landlord, the landlord's agent, and the landlord's articulated student agent 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 98 minutes from 1:30 p.m. to 3:08 p.m.

The tenant intended to call three witnesses at this hearing. Two of the three witnesses called into this hearing and provided their names and spelling. Their names are contained on the front page of this decision. They were excluded from the outset of this hearing and did not return to testify.

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

The landlord stated that he owns the rental unit. He confirmed the rental unit address. He stated that his agent and lawyer had permission to represent him at this hearing.

The tenant confirmed that her advocate had permission to represent 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”). All hearing participants 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. I informed them that I could not provide legal advice to them. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing and they wanted to settle this application.

At the outset of this hearing, the landlord’s articulated student agent confirmed receipt of the tenant’s application and notice of hearing. He said that he did not receive all of the tenant’s evidence. He claimed that he received some evidence from the tenant on March 9, 2022, the night before this hearing, on March 10, 2022.

The tenant’s advocate agreed that he served the landlord late with the tenant’s evidence on March 8, 2022, and that it was uploaded to the RTB website on March 8 and 9, 2022. He said that it was due to an error by his company, since he only recently became the tenant’s advocate. He claimed that the tenant was previously being represented by a different advocate at his company, who helped the tenant file this application in August 2021.

The tenant’s advocate confirmed receipt of the landlord’s evidence. He stated that he did not have any objections regarding same. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s evidence.

The landlord agreed to settle this application with the tenant, even though he was not served in a timely manner or with all of the tenant’s evidence. The tenant agreed to settle this application with the landlord.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the name of the landlord's agent as a landlord-respondent party. The landlord confirmed that his agent does not own the rental unit, he is not a landlord for this tenancy, and he is only an agent for the landlord owner to assist. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application increase her monetary claim for 12 month rent compensation from \$14,000.00 to \$14,700.00. The tenant said that her original application for \$14,000.00 was a mathematical error, as it should have been \$14,700.00, which is monthly rent of \$1,225.00 for 12 months. During this hearing, both parties agreed that the tenant was paying \$1,225.00 for monthly rent, at the end of this tenancy. Neither party raised any issue with this calculation during this hearing. I find no prejudice to either party in making this amendment.

Preliminary Issue – Severing the Tenant's Monetary Application

The following RTB *Rules* are applicable and state:

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* allows me to sever issues that are not related to the tenant's main urgent application. The tenant applied for three different monetary claims in this application. Both parties submitted voluminous documents as evidence for this hearing.

After 98 minutes in this hearing, there was not enough time to deal with the tenant's monetary application for \$14,700.00. The tenant's advocate stated that he wanted to call three witnesses and cross-examine the landlord and his agent. The landlord's articulated student agent stated that he would require a chance to respond to all of the tenant's evidence and witnesses.

I notified both parties that the tenant's monetary application for \$14,700.00 was dismissed with leave to reapply, as it was severed at this hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. Both parties confirmed their understanding of same.

I notified the tenant and her advocate that the tenant could file a new application and pay a new filing fee, if she wants to pursue this monetary application for \$14,700.00 in the future. They confirmed their 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 and arising out of this tenancy, except for the tenant's monetary application for \$14,700.00.

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, except for the tenant's monetary application for \$14,700.00:

1. The tenant agreed to pay the landlord \$1,200.00 total, by March 15, 2022, by way of e-transfer to the landlord's agent's email address, which was confirmed by both parties during this hearing and is contained on the front page of this decision;
2. The tenant agreed to bear the cost of the \$100.00 filing fee paid for this application;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application at this hearing and any issues arising out of this tenancy, except for the tenant's monetary application for \$14,700.00;

4. Both parties agreed that they will not initiate any future claims or applications against each other at the RTB, with respect to any issues arising out of this tenancy, except for the tenant's monetary application for \$14,700.00.

These particulars comprise the full and final settlement of all aspects of this dispute and arising out of this tenancy, except for the tenant's monetary application for \$14,700.00. 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 and arising out of this tenancy, except for the tenant's monetary application for \$14,700.00.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 98-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 and agreed to the above settlement terms. Both parties affirmed, under oath, that they agreed and understood that the above settlement terms were final, binding, and could not be changed after this hearing was over.

The tenant affirmed during this hearing, that she was given ample time during this hearing to think about, review, discuss, and ask questions about the terms of this settlement, privately with her advocate. The tenant's advocate affirmed that he had ample time to assist the tenant with this settlement throughout this hearing. The landlord affirmed during this hearing, that he was given ample time during this hearing to think about, review, discuss, and ask questions about the terms of this settlement, privately with his agent and his articulated student agent.

Conclusion

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

In order to implement the above settlement, I issue a monetary Order in the landlord's favour in the amount of \$1,200.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to pay the landlord \$1,200.00 as per condition #1 of the above agreement. The tenant must be served with a copy of 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.

The tenant 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: March 11, 2022

Residential Tenancy Branch