



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

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

- an order requiring the landlord to complete emergency repairs to the rental unit, pursuant to section 33; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 66 minutes. The landlord's agent 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.

The landlord's agent 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's agent stated that he had permission to represent the landlord named in this application.

The tenant confirmed the rental unit address. She stated that she had permission to represent the male tenant, who is her son, 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 ("RTB") *Rules of Procedure*. The landlord's agent and the tenant both 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 accommodation requests. Both parties confirmed that they wanted to settle this application.

This matter was filed as an expedited hearing under Rule 10 of the RTB *Rules*. The tenants filed this application on January 29, 2022 and a notice of hearing was issued to them by the RTB on February 8, 2022. The tenants were required to serve that notice, the application, and all other required evidence in one package to the landlord, within one day of receiving the documents from the RTB, as per RTB *Rule* 10.3.

At the outset of this hearing, the landlord's agent stated that he only received some of the tenants' evidence on March 8, 2022, two days prior to this hearing on March 10, 2022. He said that he did not receive the tenants' application for dispute resolution or the notice of hearing from the tenants. He claimed that he phoned the tenant to obtain the access code to call into this hearing.

The tenant agreed with the above information from the landlord's agent. She stated that she served the tenants' evidence to the landlord on March 8, 2022. She said that she initially received the tenants' application documents from the RTB on February 8, 2022, to serve to the landlord by February 9, 2022, but she was unable to do so in a timely manner, because she did not check all of her emails and she had health issues. She claimed that the RTB told her that she could withdraw the tenants' application, but she did not do so, because she wanted the filing fee back, and she asked the RTB for same.

The landlord's agent agreed to settle this application, even though the landlord was not served in a timely manner or with all of the tenants' application documents. The tenant asked to settle this application with the landlord's agent.

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 and argued with me and the landlord's agent.

I repeatedly cautioned the tenant, but she continued with her inappropriate behaviour. This hearing lasted longer because of the tenant's 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 settle this application.

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 filing fee.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the filing fee:

1. The landlord agreed to pay the tenants \$292.97 total, for the hydro electricity bill for the period from December 17, 2021 to February 16, 2022, by way of a cheque to be sent by registered mail by March 10, 2022, to the rental unit address;
2. The tenants agreed that they will not initiate any future claims or applications against the landlord, for monetary compensation for any past hydro bills from the beginning of this tenancy on November 8, 2021, to this hearing date of March 10, 2022;
3. The landlord agreed to ensure that the heat at the rental unit is in proper, working order, and that the heat will be fixed by strata, who controls the entire heating system at the rental property, as soon as possible, once the required parts for the heating system are delivered;
4. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application at this hearing, except for the filing fee.

These particulars comprise the full and final settlement of all aspects of this dispute, except for the filing fee. 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 filing fee.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 66-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 was given ample time during this hearing to think about, review, discuss, and ask questions about the terms of this settlement.

The landlord's agent agreed that he had permission to make this agreement on behalf of the landlord, as I provided him with extra time during this hearing to phone the landlord and confirm the settlement terms with her.

Filing Fee

Both parties were unable to settle the tenants' application to recover the \$100.00 filing fee and the tenant asked that I make a decision about it.

The filing fee is a discretionary award usually issued by an Arbitrator after a full hearing is conducted on the merits of the applicant's application, a decision is made, and the applicant is successful. Both parties settled this application, and I was not required to conduct a full hearing or make a decision on the merits of the tenants' application. Accordingly, I dismiss the tenants' application to recover the \$100.00 filing fee, without leave to reapply.

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 tenants' favour in the amount of \$292.97. I deliver this Order to the tenants in support of the above agreement for use **only** in the event that the landlord fails to pay the tenants \$292.97 as per condition #1 of the above agreement. The landlord must be served with a copy of this Order. Should the landlord 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 tenants' application to recover the \$100.00 filing fee 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 10, 2022

Residential Tenancy Branch