



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MENKIS CONSTRUCTION LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, RPP, FFT

Introduction

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

- a monetary order of \$32,450.50 for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to return the tenant's personal property, pursuant to section 65; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The landlord's agent, the tenant, and the tenant's 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 41 minutes from 11:00 a.m. to 11:41 a.m.

The landlord intended to call a witness, who was excluded from the outset of this hearing. She did not return to testify at this hearing.

The landlord's agent, the tenant, and the tenant's agent confirmed their names and spelling. The landlord's agent provided her mailing address, and the tenant provided his email address for me to send this decision to both parties after the hearing.

The landlord's agent stated that she was the administrative officer for the landlord company ("landlord") named in this application. She confirmed that she had permission to represent the landlord at this hearing. She said that the landlord owns the rental unit and confirmed the rental unit address, which is noted on the cover page of this decision.

The tenant confirmed that his agent, who is his wife, had permission to represent him 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*. The landlord’s agent, the tenant, and the tenant’s agent all separately affirmed, under oath, that they would not record this hearing.

At the outset of 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. Both parties confirmed that they were ready to proceed with this hearing.

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

The landlord’s agent stated that she did not serve a copy of the landlord’s two videos as evidence to the tenant, she only provided copies to the RTB. The tenant stated that he did not receive any evidence or videos from the landlord. I do not find it necessary to record findings about service of the landlord’s evidence to the tenant, since both parties settled this application, and I was not required to make a decision on the merits and consider the landlord’s evidence.

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.

Rule 2.3 of the RTB *Rules of Procedure* allows me to sever issues that are not related to the tenant's main urgent application. The tenant applied for three different claims in this application.

I informed the tenant that he was provided with a priority hearing date, due to the urgent nature of his claim for an order requiring the landlord to return the tenant's personal property. I informed him that this was the central and most important, urgent issue to be dealt with at this hearing.

Both parties agreed that they attended a previous RTB hearing on September 28, 2021, after which a different Arbitrator issued a decision of the same date. The tenant provided a copy of the previous decision. The file number for that hearing appears on the front page of this decision. Both parties agreed that the Arbitrator made an order for the return of the tenant's personal property at that hearing. On page 3 of that previous decision, the Arbitrator stated:

That said, the landlord is required under section 65(1)(e) of the Act to permit and allow the tenant to retrieve all of his personal property, including any vehicles. The landlord is therefore ordered, pursuant to section 65(1) of the Act, to grant the tenant access to the residential property in order to retrieve the tenant's personal property. While access may be supervised by the landlord's security staff, the landlord must ensure that the tenant is given sufficient time to carry out the retrieval of his property. This order must be complied with no later than October 10, 2021.

Both parties agreed that the tenant retrieved some, but not all of his personal property from the landlord at the rental property on October 10, 2021. The tenant confirmed that he filed this current application, asking for the same relief that he was already granted at the previous RTB hearing.

I informed the tenant that I could not make a decision regarding a return of the tenant's same personal property, as it was already decided at the previous RTB hearing, so it was *res judicata*. The tenant confirmed his understanding of same.

Both parties voluntarily agreed to meet again at the rental property for the tenant to retrieve the remainder of his personal property from the landlord, as noted below.

I notified the tenant that his monetary application for \$32,450.50 was dismissed with leave to reapply. I informed him that he received a priority hearing date for the return of personal property issue. The tenant confirmed that he already vacated the rental unit. I notified him that his 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. After 41 minutes, there was insufficient time to deal with the tenant's monetary application at this hearing. The tenant confirmed his understanding of same.

I notified the tenant that he could file a new application, if he wants to pursue his monetary claim for \$32,450.50 in the future. Further, as noted below, the tenant agreed to meet the landlord at the rental property to retrieve the remainder of his belongings and determine whether he has sufficient evidence to substantiate a monetary claim after that occurs. The tenant confirmed his 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, except for the filing fee and the monetary claim.

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

1. Both parties agreed to meet at the rental property at 9:30 a.m. on April 22, 2022, according to the following terms;
 - a. The landlord agreed to unlock and provide access to the storage at the rental property, where the tenant's personal property is stored, for the tenant and his agent;

- b. The tenant and his agent agreed to retrieve all of the tenant's personal property from the landlord's storage at the rental property during the above time and date;
2. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application at this hearing, except for the filing fee and the monetary claim.

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

The terms and consequences of the above settlement were reviewed in detail, with both parties during this 41-minute hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. Both parties affirmed that they fully understood the above settlement terms and were agreeable to them.

Filing Fee

Both parties did not settle the tenant's application to recover the \$100.00 filing fee.

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 tenant's application.

Accordingly, I dismiss the tenant's application to recover the \$100.00 filing fee, without leave to reapply. I informed the tenant about my decision verbally during this hearing. The tenant confirmed his understanding of same.

Conclusion

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

The tenant's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The tenant's application for a monetary order of \$32,450.50 for compensation under the *Act, Residential Tenancy Regulation* or tenancy agreement, is dismissed with 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: April 21, 2022

Residential Tenancy Branch