



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1288293 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, LRE, LAT, OLC, MNDCT, FFT; CNR, CNC, DRI, FFT

Introduction

This hearing dealt with the tenant's first application, filed on February 14, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 3, 2022 ("first 10 Day Notice"), pursuant to section 46;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to 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; and
- a monetary order for compensation of \$28,500.00 for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for his first application, pursuant to section 72.

This hearing also dealt with the tenant's second application, filed on March 7, 2022, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 4, 2022 ("second 10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated March 4, 2022 ("1 Month Notice"), pursuant to section 47;
- an order regarding a disputed additional rent increase of \$35.10, pursuant to section 43; and
- authorization to recover the \$100.00 filing fee paid for his second application, pursuant to section 72.

The landlord's agent, the landlord's lawyer, and the 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 lasted approximately 47 minutes.

The landlord's agent, the landlord's lawyer, and the tenant all confirmed their names and spelling. The landlord's lawyer and the tenant provided their email addresses for me to send a copy of this decision to them after the hearing.

The landlord's agent confirmed that he had permission to represent the landlord company ("landlord") named in this application at this hearing. He confirmed the landlord's name and said that the landlord owns the rental unit. He provided the rental unit address. He stated that the landlord's lawyer had permission to speak on behalf of him and the landlord at this hearing. He asked that the landlord's lawyer be the primary speaker on behalf of the landlord at this hearing. He said that he wanted a copy of my decision to be sent to the landlord's lawyer's email address after the hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the outset of this hearing, the landlord's agent, the landlord's lawyer, and the tenant all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process 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 lawyer confirmed receipt of the tenant's two applications for dispute resolution hearing packages and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's two applications and the tenant was duly served with the landlord's evidence.

During this hearing, the tenant claimed that he did not want to pursue his claim for authorization to change the locks to the rental unit. I informed the tenant that this portion of his application was dismissed without leave to reapply and he could not reapply for this claim in the future, unless new events occur after this hearing. The tenant confirmed his understanding of and agreement to same.

Preliminary Issue – Severing the Tenant's 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.***

Rule 2.3 of the RTB *Rules* allows me to sever issues that are not related to the tenant's main urgent application. Rule 6.2 states that if a tenant applied to cancel a notice to end tenancy, I can decline to hear the other claims in the application and dismiss them with or without leave to reapply. The tenant applied to cancel three different notices to end tenancy in his two applications. I informed the tenant about the above information during this hearing and he confirmed his understanding of same.

I informed the tenant that he applied for ten different claims in two different applications with a voluminous amount of evidence. I notified him that he was provided with a priority hearing date, due to the urgent nature of his claims to cancel the landlord's three notices to end tenancy, an order to comply, an order to restrict the landlord's right to enter, and authorization to change the locks. I informed him that these were the central and most important, urgent issues to be dealt with at this hearing. I informed the tenant about the above information during this hearing, and he confirmed his understanding of same.

I notified the tenant that his monetary application for \$28,500.00 was dismissed with leave to reapply. I informed 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 47 minutes, there was insufficient time to deal with

the tenant's monetary application at this hearing, as I informed both parties that the maximum hearing time was 60 minutes. Both parties submitted voluminous documents regarding the tenant's monetary application. The tenant confirmed his understanding of same.

Settlement Terms

Pursuant to section 63 of the *Act*, 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 a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of the tenant's application, currently under dispute at this time:

1. The landlord agreed that all of the landlord's notices to end tenancy, issued to the tenant, to date, are cancelled and of no force or effect;
2. The landlord agreed that the landlord does not require an order of possession against the tenant;
3. Both parties agreed that the landlord will provide the tenant with any tenancy-related documents, both by posting a copy to the tenant's door and by email to the tenant, as per the tenant's request;
4. Both parties agreed that the landlord already reimbursed the tenant for the disputed additional rent increase claim of \$35.10, prior to this hearing, and the tenant agreed that he required no further action regarding this claim;
5. The tenant agreed that this settlement agreement constitutes a final and binding resolution of a portion of his application at this hearing.

These particulars comprise the full and final settlement of a portion of the tenant's application. Both parties understood and agreed to the above terms, free of any duress or coercion. Both parties understood and agreed that the above terms are legal, final, binding and enforceable, which settle a portion of this dispute. Both parties had an opportunity to discuss the settlement terms in detail, during this 47-minute hearing.

Both parties were unable to settle the tenant's application for an order restricting the landlord's right to enter the rental unit. The tenant asked that I make a decision about this claim only at this hearing. My decision regarding this claim only is noted below.

Issue to be Decided

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant stated that his tenancy began on August 2, 2007, and he continues to reside in the rental unit.

The landlord's agent and the tenant agreed to the following facts. Monthly rent in the current amount of \$675.00 is payable on the first day of each month. The tenant paid a security deposit of \$175.00 and the landlord continues to retain this deposit. The landlord purchased the rental property building in September 2021 and assumed the tenant's tenancy from the former landlord. The tenant signed a written tenancy agreement with the former landlord, but no new tenancy agreement was signed by both parties after the landlord purchased the rental building.

The tenant testified regarding the following facts. The landlord should not be able to enter his rental unit every 30 days. The landlord has to be "truthful" in providing reasons for entering the rental unit. One time the landlord entered the rental unit and cut holes in the tenant's ceiling to deal with asbestos. The landlord is taking a video of the tenant during the inspection, which impacts the tenant's privacy rights. The landlord has asked the tenant questions about whether he has drugs, weapons, or violence. The landlord should give proper notice to the tenant, prior to entering the rental unit, because the landlord gives an eight-hour time frame for entry, along with other tenant's units in the building. The landlord accuses tenants of changing the locks if they are not present when the landlord completes inspections. The landlord expects the tenant to be home and present for inspections.

The landlord's lawyer made the following submissions. The landlord has always provided a reason and proper notice with the time, prior to entering the tenant's rental unit. The landlord typically enters the rental unit to conduct condition inspections. The tenant is not required to be present during these inspections. The landlord has not conducted inspections in the tenant's rental unit for several months now. This is a new

landlord that took over the rental property in 2021. The rental building is very old, as it was built in 1904, so it is over 100 years old. The landlord is conducting inspections of the rental building because it is such an old building.

The landlord's agent testified regarding the following facts. He always provides at least 72 hours or five days advance notice to the tenant, prior to entering the rental unit. The landlord has completed \$100,000.00 in renovation to the common areas and rental units at the rental property. The landlord has to inspect the building and the rental units in accordance with its "fiduciary duty." The landlord's agent denies asking the tenant about weapons or violence when he inspects the rental unit. He asked the tenant about drugs because he saw a farm of marijuana plants growing in the back and front of the rental building and the tenant's family is involved with growing these plants.

The tenant stated the following facts in response to the landlord's agent's submissions. The landlord is exaggerating regarding the marijuana plants. They have nothing to do with the tenant.

Analysis

During this hearing, I informed the tenant that he provided the following details of dispute on the online RTB website for his first application, filed on February 14, 2022:

"The property managers abuse the RTB 30-day entry rule to intimidate or pressure tenants every month. Even after issuing a notice to all tenants that the owners are planning on a "full scale, gut renovation, of the building," the property managers appear to relish the opportunity to generate more fraudulent evidence. After five monthly inspections since ownership to date, I firmly believe there is no longer a legitimate reason to require a monthly right to enter."

During this hearing, I informed both parties that section 29 of the Act states the following (emphasis added):

Landlord's right to enter rental unit restricted

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

I find that the landlord has provided proper notice, prior to entering the tenant's rental unit, in accordance with section 29 of the *Act*. I accept the submissions of the landlord's lawyer and the affirmed testimony of the landlord's agent that the landlord has provided at least 24 hours written notice to the tenant, as well as the purpose for entering the rental unit and a time to enter the rental unit, as required by section 29 of the *Act*. I find that the landlord is entitled to inspect the rental unit once every 30 days, as per section 29 of the *Act*.

The tenant did not dispute the testimony of the landlord's agent or the submissions of the landlord's lawyer, that the tenant is provided with written notice, at least 24 hours prior to entry, with a reason and a time, prior to entering the rental unit.

During this hearing, the landlord's lawyer confirmed that the tenant is not required to be present during inspections of the rental unit. As noted above, both parties agreed that the landlord will provide the tenant with two methods of written notice prior to entering the rental unit, as per the tenant's request, including posting a notice on the tenant's door and a copy by email to the tenant.

I find that the tenant has provided insufficient evidence that he requires an order to restrict the landlord's right to enter the rental unit. This claim is dismissed without leave to reapply.

Filing Fees

Both parties did not settle the tenant's claims to recover two \$100.00 filing fees paid in both applications.

The tenant stated that he filed two applications because he received notices to end tenancy from the landlord at different times. The tenant confirmed that he is aware of the amendment process, but he did not amend his first application to add additional claims, he filed two applications instead.

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 five claims in this application at the outset of this hearing (three cancellations of three notices to end tenancy, a disputed additional rent increase, an order to comply). The tenant did not pursue one of his claims (authorization to change the locks). I was not required to make a decision on the merits, regarding the tenant's above six claims, at this hearing.

One of the tenant's claims was dismissed with leave to reapply (monetary order), since it was severed at this hearing. It was not an urgent, priority issue and there was insufficient time because the tenant filed ten claims in two applications to be heard at one hearing. The tenant was unsuccessful when I made a decision about one of his claims (an order restricting the landlord's right to enter) and it was dismissed without leave to reapply.

For the above reasons, I dismiss the tenant's application to recover the two \$100.00 filing fees paid for both applications, totalling \$200.00, without leave to reapply.

Conclusion

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

All of the landlord's notices to end tenancy, issued to the tenant to date, are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's monetary application for \$28,500.00 is dismissed with leave to reapply.

The remainder of the tenant's 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: May 20, 2022

Residential Tenancy Branch