



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: **OPR-DR, MNR-DR, FFL**

Tenant: **MNDCT, CNR, RR, RP, OLC**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the "Act").

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant applied for:

- A monetary order for damages or compensation pursuant section 67;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for repairs to be made to the unit, site or property pursuant to section 32; and
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both the landlord and the tenant attended the hearing. The landlord was represented by an agent, property manager VS. The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was

made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the *Act*.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Preliminary Issue – service of documents

The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings package. The tenant acknowledged receipt of the landlord's Notice of Dispute Resolution Proceedings package on May 3, 2022 but testified that he did not receive a copy of the tenancy agreement in the landlord's evidentiary material. The landlord testified that everything provided to me as evidence was also provided to the tenant when the Notice of Dispute Resolution Proceedings package was sent by registered mail on April 28, 2022.

Whether the tenancy agreement was sent to the tenant by the landlord comes down to a test of credibility. In *Bray Holdings Ltd. v. Black BCSC 738*, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions."

I find it more likely than not that the tenancy agreement was provided to the tenant as part of the evidence together with the Notice of Dispute Resolution Proceedings based on a balance of probabilities. I find it would be unreasonable for the landlord to knowingly withhold sending that document to the tenant and prevent her from referring to it during testimony and thereby weakening her case. Based on these findings, the tenancy agreement is admitted as evidence in these proceedings and will be referred to in this decision.

Preliminary Issue – severing of issues and other named applicant

The tenant filed his application for dispute resolution together with another person who is not named on the tenancy agreement of the parties before me. Likewise, the landlord filed her application naming the sole tenant, BH and both the landlord's application and

the tenant's application were joined to be heard together by the Residential Tenancy Branch.

The parties agreed that the second applicant CB, named on the tenant's application, is bound to a separate tenancy agreement and as such I determined that CB lacks the standing to commence a dispute resolution on BH's tenancy. Consequently, I amended the tenant's application to remove CB as a party to the tenant's application and advised the landlord that CB's tenancy is not at issue in this hearing. Both parties testified that they understood.

Second, Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and the landlord's application to end the tenancy for unpaid rent are related issues and could be heard together. The tenant's other issues were not sufficiently related, and I exercised my discretion to dismiss them with leave to reapply.

Preliminary Issue – Partial Settlement Reached

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 or an order. I advised the parties on several occasions that there is no obligation to resolve the dispute through settlement and that if either party did not wish to resolve this matter through settlement, I was prepared to make a decision based on the evidence before me. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their disputes.

1. The parties mutually agree to end this tenancy. This tenancy will end at 1:00 p.m. on July 31, 2022, by which time the tenant will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settles this aspect of the dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to the this aspect of the applications before me.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can either party recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is a single room in a 2 bedroom apartment, shared with another tenant-in-common, CB. CB is bound by his own tenancy agreement and pays his own rent. The parties attended a dispute resolution hearing on December 7, 2021 regarding a previous notice to end tenancy for unpaid rent and compensation to the tenant. The file numbers for the previous hearing are recorded on the cover page of this decision. At that hearing, the landlord's application for an Order of Possession and monetary orders seeking rent from June 1, 2021 to August 31, 2021 were dismissed without leave to reapply. The arbitrator granted the tenant and the tenant-in-common CB a monetary order in the amount of \$781.90 and permitted the tenant and CB to reduce rent for a future month by that amount. The arbitrator also ordered that the landlord replace a stove, replace a mailbox door, restore power and internet and commence paying for it.

The landlord gave the following testimony. The month to month tenancy began on June 1, 2020 with rent set at \$650.00 per month payable on the first day of the month. A security deposit of \$300.00 was collected from the tenant which the landlord continues to hold. The landlord has done all the things the arbitrator ordered her to do and yet the tenant has not made any payments of rent, except for a single \$300.00 payment made on March 4, 2022. The property manager (appearing as the landlord's agent for this hearing) gave the tenant a receipt for the single payment and provided it as evidence for the hearing.

The landlord provided a monetary order worksheet indicating the tenant has not paid rent in the amount of \$650.00 per month from July 1, 2021, through to March 31, 2022, a total of 9 months, for a total of \$5,850.00. Deducting the \$300.00 payment made on March 4, 2022, and one half the monetary order from the arbitrator (\$390.95), the total amount owing as of March 15th, the date the landlord served the 10 Day Notice to End

Tenancy for Unpaid Rent/Utilities, was \$5,159.05. The landlord testified that the tenant has not paid rent for April, May, June or July and the landlord seeks compensation for those months, as well.

The tenant gave the following testimony. He does not acknowledge rent is \$650.00 per month but was agreed to be \$600.00 per month. He never received a copy of the tenancy agreement from the landlord and \$600.00 per month is his recollection of the agreement. The tenant testified that he paid his rent to the landlord in cash, but he never received any receipts for the payments. Rent was paid up to March. He only paid \$300.00 on March 4th because he was short, but he was going to make up the rest when he was served with the notice to end tenancy.

When I asked the tenant about the cash payments for the preceding months of February and January, the tenant testified that February's was paid, and he had simply given up on insisting on getting a receipt for the cash payments. For January, the tenant acknowledges he didn't pay because the arbitrator's decision came out in mid-December, and he was "pissed off" that the landlord didn't do the required repairs before the deadline.

The tenant acknowledges he didn't pay rent for the months of April, May, June and July because he had "given up". There's no sense in paying rent twice. The landlord's application before the previous arbitrator was dismissed because the landlord lied and it would be a miracle if they won again and he didn't want to pay twice.

Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities.

The tenant argues that rent was set at \$600.00 per month while the landlord provided a copy of the tenancy agreement that shows rent is set at \$650.00 per month. The ***Parol Evidence Rule*** is a legal principle that preserves the integrity of written documents or agreements by prohibiting the parties from attempting to alter the meaning of the written

document through evidence of the subjective intentions of the parties (such as discussions and communications that are not referenced in the document). In other words, there is a strong presumption in favour of the written document. Based on the Parol Evidence Rule, I find that rent is set at \$650.00 per month.

Based on the previous application filed by the landlord and the decision rendered by the arbitrator on December 14, 2021, I find that the landlord sought a monetary order for rent for the months of July and August of 2021 and that application was dismissed without leave to reapply. I will therefore determine whether the tenant paid rent from September 1, 2021, onward.

Section 26(2) states that a landlord must provide a tenant with a receipt for rent paid in cash. While the tenant testified that he was paying rent as cash and wasn't receiving receipts, I find that on a balance of probabilities, this is not likely to be the case. The landlord is represented by a property manager, and I am not convinced the property manager would accept a payment of rent in cash, failing in her fiduciary duty to do so, and breach section 26(2) of the Act by failing to provide a receipt. In support of the landlord's position that receipts were provided, the landlord and the tenant both presented a copy of the receipt issued on March 4, 2022, for the single cash payment made by the tenant. In other words, I find that the cash payments for rent as alleged by the tenant simply didn't happen. Consequently, I find the tenant was obligated to pay rent for the months of September through to March in the amount of \$5,850.00 and failed to do so. After deducting the single \$300.00 payment made on March 4th (\$300.00) and half the arbitrator's award (\$390.95), the landlord is entitled to a monetary order in the amount of **\$5,159.05**.

Further, the tenant acknowledges not paying rent for April, May, June and the first few days of July. I award the landlord a further [$\$650.00 \times 3 = \mathbf{\$1,950.00}$] plus an additional [$\$650.00 / 31 \text{ (days)} = \$20.98 \times 10 \text{ (days)} = \mathbf{\$209.80}$] for the first 10 days in July.

The landlord's application was successful and the tenant's was not. I award the filing fee of **\$100.00** to the landlord and I dismiss the tenant's application to recover the filing fee. The landlord continues to hold the tenant's security deposit of \$300.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

Conclusion

Pursuant to section 63(2), I recorded the following settlement made by the parties:

1. The parties mutually agree to end this tenancy. This tenancy will end at 1:00 p.m. on July 31, 2022, by which time the tenant will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on July 31, 2022, should the landlord be required to do so.

Item	Amount
Rent from September 01, 2021 to March 31, 2022	\$5,850.00
Less \$300.00 payment made March 04, 2022	(\$300.00)
Less half monetary award from arbitrator	(\$390.95)
Rent from April 1, 2022 to June 30, 2022	\$1,950.00
10 days pro-rated rent from July 1 to July 10, 2022	\$209.80
Filing fee	\$100.00
Less security deposit	(\$300.00)
Total	\$7,118.85

Pursuant to section 67 of the *Act*, I award the landlord a monetary order in the amount of **\$7,118.85**. This Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 10, 2022

Residential Tenancy Branch