



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DOC TITLE

Dispute Codes **CNC, RP, FFT**

Introduction

This hearing was convened by way of conference call in response to the Tenants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Tenants seek:

- an order to cancel a One Month Notice to End Tenancy for Cause dated March 23, 2022 ("1 Month Notice") pursuant to section 47;
- an order requiring the Landlord to complete repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee of the Application from the Landlord pursuant to section 72.

The original hearing of the Application was held on June 10, 2021 at 9:30 am ("Original Hearing"). The two Tenants ("AJ" and "JB"), the Landlord and the Landlord's advocate ("CO") attended the Original Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. There was insufficient time to take all the parties' testimony and allow rebuttals at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing ("First Adjourned Hearing") and issued a decision dated June 14, 2022 ("First Interim Decision"). The First Interim Decision stated that Landlord and Tenants were not permitted to serve each other or file any additional evidence with the Residential Tenancy Branch ("RTB"). The Interim Decision, and Notices of Dispute Resolution Proceeding for the First Adjourned Hearing, scheduled for June 24, 2022 at 1:30 pm, were served on the parties by the RTB.

The Tenants AJ and JB, the Landlord and the Landlord's advocate CO attended the First Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. There was insufficient time to take all the parties' testimony and allow rebuttals at the First Adjourned Hearing. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing ("Second Adjourned Hearing") and issued a decision dated July 4, 2022 ("Second Interim Decision"). The Second Interim Decision stated that Landlord and Tenants were not permitted to serve each other or file any additional evidence with the RTB. The Second Interim Decision, and Notices of Dispute Resolution Proceeding for the Second Adjourned Hearing, scheduled for July 8, 2022 at 11:00 am, were served on the parties by the RTB.

The Tenants AJ and JB, the Landlord and the Landlord's advocate CO attended the Second Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. A witness ("MM") attended the Second Adjourned Hearing to give testimony on behalf of the Landlord when required.

At the Original Hearing, AJ stated the Tenants served the Notice of Dispute Resolution Proceeding and some of their evidence ("NDRP Package") on the Landlord in-person on April 9, 2022. The Landlord acknowledged receipt of the NDRP Package. I find the NDRP Package was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

At the Original Hearing, AJ stated the Tenants served additional evidence on the Landlord in-person on May 29, 2022. The Landlord acknowledged receipt of the Tenants' additional evidence. I find the Tenants' additional evidence was served on the Landlord in accordance with the provisions of section 88 of the Act.

At the Original Hearing, the Landlord stated she served some of her evidence on the Tenants by email on April 30 and May 30, 2022. Although the Landlord admitted she did not have a signed consent from the Tenants to serve documents on them by email, the Tenants acknowledged receipt of the Landlord's evidence. As such, I find the Landlord's evidence was sufficiently served on the Tenants pursuant to section 71(2)(b) of the Act.

Preliminary Matter at Original Hearing – Late Service of Evidence by Landlord

At the Original Hearing, the Landlord stated she served additional evidence on the Tenants by email on June 5, 2022. Rules 3.15 and 3.17 of the RoP reads in part as follows:

3.15 Respondent's evidence provided in single package

Where possible, copies of all of the respondent's available evidence should be submitted to the Residential Tenancy Branch online through the Dispute Access Site or directly to the Residential Tenancy Branch Office or through a Service BC Office. The respondent's evidence should be served on the other party in a single complete package.

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. See also Rules 3.7 and 3.10.

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above *provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice*. Both parties must have the opportunity to be heard on the question of accepting late evidence.

[italics added]

The Landlord did not serve her final evidence on the Tenants until less than seven days before the date of the Original Hearing, The Landlord did not give any testimony, or submit any evidence, to show that the additional evidence was new and relevant evidence and that it was not available less than seven days before the Original Hearing. As such, the Landlord has not complied with Rule 3.15 and, as it could not be considered new and relevant evidence pursuant to Rule 3.17, I find that the Landlord's additional evidence submitted less than seven days prior to the Original Hearing is not admissible for the hearing of the Application.

Preliminary Matter at Original Hearing – Severance of Tenants' Claim

The Application included a claim by the Tenants for an order requiring the Landlord complete repairs to the renal unit. Rule 2.3 of the RoP states:

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the Application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner. As such, depending upon the outcome of the hearing, I reserve the right to sever and dismiss the Tenants' claim for the Landlord to complete repairs to the rental unit.

Settlement Agreement

Pursuant to section 63 of the Act, an 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. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

The parties agreed to the following final and binding settlement of all issues currently under dispute:

1. The Landlord agrees to cancel the 1 Month Notice;
2. The Tenants agree to withdraw the Application; and
3. The Tenants agree to vacate the rental unit by 1:00 pm on July 31, 2022.

These particulars comprise the full and final settlement of all aspects of the Tenants' dispute against the Landlord. The parties gave verbal affirmation at the hearing that they understood and agreed to the above terms as legal, final, and binding, which settle all aspects of claims, other than the claim severed by me, made in the Application.

As the Tenants are vacating the rental unit pursuant to the Settlement Agreement between them, the claim that the Landlord complete repairs to the rental unit is now moot. As such, I dismiss that claim without leave to reapply. The Tenants may call the contact centre at the RTB to obtain information on any remedies they may have for compensation in respect of the Landlord's failure to perform repairs to the rental unit in accordance with the provisions of the Act.

Conclusion

As the parties have reached a full and final settlement of all the claims set out in the Applications, I make no factual findings about the merits of the Application.

To give effect to the settlement reached between the parties, and as discussed at the hearing, I grant the Landlords an Order of Possession effective at 1:00 pm on July 31, 2022. The Landlord is provided with this Order on the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia 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 8, 2022

Residential Tenancy Branch