



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, FFT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 22, 2022 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order of \$21,216.00 for compensation under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

"Tenant RA" did not attend this hearing, which lasted approximately 68 minutes from 11:00 a.m. to 12:08 p.m. The landlord, the landlord's lawyer, and tenant AG ("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, the landlord's lawyer, and the tenant confirmed their names and spelling. The landlord's lawyer and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that she owns the rental unit. She provided the rental unit address. She confirmed that her lawyer had permission to represent her at this hearing.

The tenant confirmed that she had permission to represent tenant RA, who she said is her husband, at this hearing (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any party. The landlord, the landlord’s lawyer, and the tenant 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 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. Both parties confirmed that they were ready to proceed with this hearing, they wanted to settle this application, and they did not want me to make a decision. Neither party made any adjournment or accommodation requests.

The landlord’s lawyer confirmed receipt of the tenants’ application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was duly served with the tenants’ application and both tenants were duly served with the landlord’s evidence.

The tenant confirmed receipt of the landlord’s 2 Month Notice. A copy of the notice was provided for this hearing. The effective move-out date on the notice is May 31, 2022. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord’s 2 Month Notice.

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 this 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. Both parties agreed that this tenancy will end by 8:00 p.m. on September 30, 2023, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that the tenants are permitted to vacate the rental unit earlier than September 30, 2023, provided that the tenants first give at least 30 days’

written notice to the landlord, by way of email, regular mail, or a letter handed to the landlord in person;

- a. The landlord's email address was verbally confirmed by both parties during this hearing;
 - b. The landlord's mailing address was verbally confirmed by both parties during this hearing and both parties agreed that it is also located on the landlord's 2 Month Notice and the tenants' application for dispute resolution;
 - c. The landlord agreed that if she changes her mailing address, she will send a written notice to the tenants regarding same;
3. Both parties agreed that the landlord's 2 Month Notice, dated March 22, 2022, is cancelled and of no force or effect;
 4. The tenants agreed to pay full monthly rent for this rental unit and tenancy, to the landlord, for the remainder of this tenancy;
 5. The tenants agreed that this settlement agreement constitutes a final and binding resolution of their application at this hearing, including their monetary claim for \$21,216.00 and the tenants agreed that they will not pursue any future claims or applications against the landlord regarding the above monetary claim;

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, 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 68-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 the above settlement terms and were agreeable to them.

During this hearing, I repeatedly confirmed the above settlement terms with the tenant. The tenant repeatedly affirmed, under oath, that the tenants were agreeable to the above settlement terms, and they understood that they were legal, final, binding and enforceable. The tenant repeatedly affirmed, under oath, that the tenants agreed and understood that they could not change the settlement terms after the hearing was over and they knew it was a full and final settlement of this application. The tenant was given ample time during this hearing, to think about, review, discuss and ask questions about the above settlement terms.

Filing Fee

Both parties did not settle the tenants' application to recover the \$100.00 filing fee. The tenant asked that I make a decision about it.

The tenant claimed that the tenants are entitled to recover the filing fee because the landlord harassed the tenants and there were previous RTB disputes and file numbers where the tenants were successful disputing the landlord's notices to end tenancy. I informed the tenant that RTB filing fees are separate for each different RTB application and file number.

The filing fee is a discretionary award usually issued by an Arbitrator after a full hearing is conducted on the merits of the tenants' application, a decision is made by the Arbitrator, and the tenants are successful. Both parties settled the tenants' application at this hearing. I was not required to conduct a full hearing or make a decision on the merits of the tenants' application.

Regardless of whether the tenants were successful at previous RTB hearings, the filing fee paid for this current application is separate and distinct from the filing fees paid for previous RTB applications.

For the above reasons, 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.

To give effect to the settlement reached between the parties and as advised to them during the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenant(s) and any other occupants fail to vacate the rental premises by 8:00 p.m. on September 30, 2023. The tenant(s) must be served with this Order. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: August 12, 2022

Residential Tenancy Branch