



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1098010 BC LTD
and [tenant name suppressed to protect privacy]

FINAL DECISION

Dispute Codes OPR, OPL, MNRL, MNDCL, FFL; CNL, LRE; CNR, LRE

Introduction

This hearing dealt with the landlord's application, filed on June 16, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and utilities and for landlord's use of property, pursuant to section 55;
- a monetary order for unpaid rent, utilities, and for compensation under *the Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the \$100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenant's first application, filed on April 14, 2022, pursuant to the *Act* for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated March 31, 2022 ("2 Month Notice"), pursuant to section 49; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

This hearing also dealt with the tenant's second application, filed on May 17, 2022, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 12, 2022 ("10 Day Notice"), pursuant to section 46; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The first hearing on August 15, 2022 lasted approximately 76 minutes from 9:30 a.m. to 10:46 a.m. The tenant intended to call her sister as a witness at the first hearing. The tenant's witness called into the first hearing at 9:32 a.m. and was immediately excluded at 9:33 a.m. The tenant's witness did not return or testify at the first hearing, and she did not hear any evidence from either party during the first hearing.

The second hearing on December 23, 2022 lasted approximately 15 minutes from 9:30 a.m. to 9:45 a.m. I monitored the teleconference line throughout the second hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the reconvened Notice of Hearing. I also confirmed from the teleconference system that the tenant's advocate and I were the only people who called into this teleconference.

The landlord and the tenant attended the first hearing only, but not the second hearing. The tenant's advocate attended both hearings. At both hearings, all participants were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

All hearing participants confirmed their names and spelling at both hearings. The landlord and the tenant provided their email addresses for me to send my interim decision to both parties after the first hearing. At the second hearing, the tenant's advocate provided her email address for me to send my final decision to the tenant after the second hearing.

At the first hearing, the landlord stated that she owns the rental unit and confirmed the rental unit address. At the first hearing, the tenant confirmed that her advocate had permission to speak on her behalf.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of the first hearing, the landlord, the tenant, and the tenant's advocate all separately affirmed, under oath, that they would not record the first hearing. At the outset of the second hearing, the tenant's advocate affirmed, under oath, that she would not record the second hearing.

At the first hearing, I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. At both hearings, both parties had an opportunity to ask questions. At both hearings, neither party made any accommodation requests. At the first hearing, neither party made any adjournment requests. At the first hearing, both parties confirmed that they were ready to proceed with that hearing.

Preliminary Issue – First Hearing and Service of Documents

The landlord filed one application and the tenant filed two separate applications, all three of which were joined to be heard together at the same time. At the first hearing, the landlord confirmed receipt of the tenant's two applications for dispute resolution hearing packages. In my interim decision, I found that in accordance with section 89 of the *Act*, the landlord was duly served with the tenant's two applications.

At the first hearing, the tenant's advocate confirmed receipt of the landlord's evidence for the landlord's application. She said that the tenant did not receive the landlord's notice of hearing, but the tenant had a copy of her notice of hearing, because she filed her own two applications, to be heard at the same date and time. The tenant's advocate stated that the tenant was ready to proceed with the first hearing and to deal with the landlord's application, despite the tenant not receiving the landlord's notice of hearing. In my interim decision, I found that in accordance with section 89 of the *Act*, the tenant was duly served with the landlord's application evidence.

At the first hearing, both parties settled all three applications, except for the landlord's application for unpaid rent from April to July 2022 and the \$100.00 filing fee. Those claims were adjourned to the second hearing date on December 23, 2022, as the first hearing lasted 76 minutes, past the 60-minute maximum hearing time.

In my interim decision, and as informed to the tenant's advocate during the second hearing, both parties settled their applications at the first hearing, according to the following terms. The tenant agreed to vacate the rental unit by August 31, 2022, the landlord agreed to cancel all of her notices to end tenancy, the landlord agreed not to pursue unpaid utilities against the tenant, and the tenant agreed for the landlord to keep her security and pet damage deposits to pay for August 2022 rent. The tenant's advocate agreed with the above information during the second hearing.

In my interim decision, and as informed to the tenant's advocate during the second hearing, I noted the following:

This hearing did not conclude after 76 minutes and the landlord's application for unpaid rent from April to July 2022 and the \$100.00 filing fee, was adjourned for a continuation. The landlord completed her submissions and evidence at this hearing. The tenant and her advocate completed their response submissions and evidence at this hearing. The tenant stated that she wanted her sister to

testify as a witness at a future hearing. The reconvened hearing is only to hear the testimony from the tenant's witness and to hear response submissions from the landlord.

I informed both parties that I am seized of this matter and the hearing will be reconvened as a conference call hearing. A copy of the Notice of Reconvened hearing with the calling instructions is included with this decision.

I informed both parties of the following information during this hearing. Both parties are directed not to serve any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing, except for the tenant's sister. Neither party is permitted to file any new applications after this hearing date of August 16, 2022, to be joined and heard together with the landlord's application, at the reconvened hearing. Both parties confirmed their understanding of same.

The tenant's advocate agreed with the above information during the second hearing.

Preliminary Issue – Tenant's Adjournment Request

At the second hearing, the tenant's advocate confirmed receipt of my interim decision and notice of reconvened hearing.

At the second hearing, the tenant's advocate stated the following facts. She spoke to the tenant on December 15, 2022, and informed her about the second hearing date and to come to the advocate's office at 9:00 a.m. The office was closed, so she emailed the tenant because she could not reach her by telephone. She asked the tenant to call into the second hearing directly, not come into her office. She does not know whether the tenant's witness will call in or attend the second hearing. There are many files and other hearings for this tenancy, so the tenant may have mixed up this matter, with a hearing that was cancelled on December 22, 2022. She does not know whether the tenant received the notice of reconvened hearing for the second hearing.

The tenant's advocate requested an adjournment of the second hearing. During the second hearing, I informed the tenant's advocate that I would not adjourn the second hearing. This decision was made after taking into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

According to the online RTB dispute access site, the landlord and the tenant were sent copies of the interim decision and notice of reconvened hearing on August 17, 2022. I notified the tenant's advocate of same during the second hearing.

I find that, although duly served and notified, the landlord, the tenant, and the tenant's witness did not attend the second hearing.

I find that an adjournment of this matter would likely not result in a resolution, since both parties filed their original applications in April, May, and June 2022, attended the first hearing in August 2022, and had not resolved the unpaid rent issue at the time of the second hearing in December 2022.

I find that an adjournment of this matter would prejudice the landlord, who filed her original application on June 16, 2022, and the second hearing occurred on December 23, 2022, over six months later.

The first hearing was adjourned because the tenant wanted her sister to testify, and the first hearing was 76 minutes, which was well over the 60-minute hearing time. The tenant's advocate provided multiple dates in September, October, and November 2022, when she was unavailable to attend the second hearing, so she and the tenant were accommodated with a hearing date in December 2022, to avoid any conflicts. The second hearing was only scheduled to hear testimony from the tenant's sister and obtain a response from the landlord, since both parties finished their testimony at the first hearing. All of the above information was reviewed at the first hearing with both parties and was contained in my interim decision.

I find that the tenant had ample notice of the second hearing, since she was sent the interim decision and notice of reconvened hearing on August 17, 2022, over four

months prior to the second hearing on December 23, 2022. I find that the tenant had ample time to arrange for herself and her witness to attend the second hearing. I find that the tenant's potential "mix up" with other files or hearing dates is not a valid reason for adjournment, and was not confirmed by the tenant during the second hearing, as it was merely speculation by her advocate. I find that a change from an in-person office appointment with the tenant's advocate to a direct phone call into this hearing is not a valid reason for adjournment. The tenant was sent the notice of reconvened hearing with the details to call into the second hearing, but she and her witness failed to do so. I find that the tenant's advocate had no knowledge of whether the tenant's witness would attend the second hearing. I find that this matter was already adjourned once, and cannot be delayed again, to accommodate the tenant's and her witness's failure to attend the second hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent from April to July 2022?

Is the landlord entitled to recover the \$100.00 filing fee paid for her application?

Background and Evidence

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

At the first hearing, the landlord and the tenant agreed to the following facts. This tenancy began on August 1, 2021. Monthly rent in the current amount of \$1,850.00 is payable on the first day of each month. Both parties signed a written tenancy agreement.

At the first hearing, the landlord stated the following facts. The tenant owes outstanding rent of \$1,850.00 for each month from April to July 2022, to the landlord. The landlord received cash rent from the tenant. No rent receipts were provided to the RTB, by the landlord, as rent was based on an "honour system."

At the first hearing, the tenant testified regarding the following facts. The tenant paid full rent to the landlord from April to July 2022. The tenant paid rent in cash to the landlord. The landlord used to pick up the rent from the tenant, until there were disagreements.

After that, the tenant's sister took the tenant to the landlord's house to pay rent. The tenant paid rent on April 1, 2022, to the landlord, by cash, after her sister took her to the landlord's house. The tenant's sister paid rent on May 1, 2022 and on June 1 or 2, 2022, by cash, to the landlord, on behalf of the tenant. The tenant paid rent on July 4, 2022, by cash, as the tenant's sister took the tenant to the landlord's house. The tenant paid partial rent of half a month, in two separate portions, for December 2021 and January 2022, as allowed by the landlord. The tenant paid full rent at one time to the landlord for each month. The tenant did not pay rent early to the landlord. The tenant did not receive rent receipts from the landlord. The tenant paid cash rent using \$100.00 bills from the bank.

No submissions regarding the unpaid rent were provided by the tenant's advocate at the second hearing.

Analysis

Section 26 of the *Act* requires the tenant to pay rent, as per the tenancy agreement, which is on the first day of each month, in this case. Section 46 of the *Act* requires the tenant to pay rent, regardless of whether the landlord has complied with the *Act*. The tenant can only deduct rent as per the *Act*, if the tenant has an order from an Arbitrator or the tenant has paid for emergency repairs in accordance with section 33 of the *Act*.

On a balance of probabilities, I find that the landlord has provided sufficient evidence that the tenant owes rent for this tenancy of \$1,850.00 for each month, from April to July 2022, totalling \$7,400.00. I find that the tenant did not have an order from an Arbitrator to deduct rent. I find that the tenant is not entitled to deduct rent for emergency repairs in accordance with section 33 of the *Act*.

I find that the tenant provided insufficient evidence that she paid full rent of \$1,850.00 to the landlord from April to July 2022. The tenant testified that she paid rent in cash, to the landlord. However, I find that the tenant did not provide sufficient documentary evidence of same. The tenant did not provide rent receipts, claiming that the landlord did not provide any. The tenant did not provide bank records, a letter from her bank, or other sufficient documents, to show that she withdrew cash to pay rent to the landlord, despite claiming that she paid using \$100.00 bills.

The tenant's witness, her sister, did not appear at the second hearing, to provide testimony, regarding rent payments. The first hearing was adjourned in order to allow the tenant's witness to attend the second hearing and provide testimony. The tenant

claimed that her witness paid some of the rent on the tenant's behalf, but the witness did not provide affirmed testimony to confirm same.

As the landlord was successful in her application for unpaid rent, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

The landlord is provided with a monetary order of \$7,500.00.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$7,500.00, against the tenant. The tenant must be served with a copy of this Order. Should the tenant fail to comply with this Order, 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: January 3, 2023

Residential Tenancy Branch