



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR, FFT

Introduction

This hearing dealt with the landlord's application, filed on October 11, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent of \$7,800.00, pursuant to section 67;
- authorization to recover the \$100.00 filing fee paid for his application, pursuant to section 72.

This hearing also dealt with the tenants' application, filed on September 20, 2022, pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 13, 2022 ("10 Day Notice"), pursuant to section 46;
- authorization to recover the \$100.00 filing fee paid for their application, pursuant to section 72.

"Tenant LR" did not attend this hearing. The landlord, the landlord's son, and tenant AF ("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 25 minutes from 1:30 p.m. to 1:55 p.m.

The landlord confirmed the names and spelling for him and his son. The tenant confirmed the names and spelling for him and tenant LR. The landlord and the tenant both provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that his son was not participating in this hearing. The landlord's son did not testify at this hearing.

The tenant confirmed that he had permission to represent tenant LR, who is his wife, at this hearing (collectively “tenants”).

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 this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions. Neither party made any adjournment or accommodation requests.

Both parties confirmed that they were ready to proceed with this hearing, they wanted to settle a portion of their applications, and they wanted me to make a decision regarding the landlord’s application for unpaid rent.

The landlord confirmed receipt of the tenants’ application for dispute resolution hearing package. The tenant confirmed receipt of the landlord’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both tenants were duly served with the landlord’s application and the landlord was duly served with the tenants’ application.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing
Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator’s direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the tenant interrupted me, spoke at the same time as me, yelled at me, and argued with me. I cautioned the tenant multiple times regarding the above inappropriate behaviour, but he continued with same.

This hearing took longer because of the disruptive behaviour of the tenant. Despite the tenant's behaviour, I allowed him to attend the full hearing, in order to provide him with a full opportunity to settle both applications and respond to the landlord's claims for unpaid rent.

Preliminary Issue – Amendments to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of tenant LR's surname. The tenant provided the spelling of tenant LR's surname during this hearing. Both parties consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

I informed the landlord that he only applied for unpaid rent in his application, not for NSF fees or for hydro costs. Although the landlord included an amount of \$300.00 for NSF fees in his application, he included this amount as part of unpaid rent, rather than making a separate claim for other losses. I notified the landlord that he did not include any amounts for unpaid hydro costs in his application.

I do not amend the landlord's application to add any claims for NSF fees or hydro costs. The landlord had ample time, prior to this hearing, to amend his application to add the proper claims and amounts. The landlord filed his application on October 11, 2022, almost 4 months prior to this hearing on February 3, 2023.

Therefore, I informed the landlord that I would not deal with the landlord's NSF fees or hydro costs at this hearing or in my decision. The landlord's claim for NSF fees of \$300.00 is dismissed with leave to reapply.

Rule 4.2 of the *RTB Rules* states the following (bold emphasis in original):

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlords' monetary claim to include unpaid rent from November 2022 to February

2023. The landlord filed his application on October 11, 2022, prior to the above rent being due.

The tenants are aware that rent is due as per their tenancy agreement. The tenants have continued to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier, for failure to pay the full rent due.

Therefore, the tenants knew or should have known that by failing to pay their full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent.

The tenant had notice, an opportunity to respond, and provided testimony at this hearing regarding the landlord's claims for unpaid rent from November 2022 to February 2023.

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 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, except for the landlord's monetary claim for unpaid rent.

Both parties agreed to the following final and binding settlement of their dispute, except for the landlord's monetary claim for unpaid rent:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on February 10, 2023, by which time the tenants and any other occupants will have vacated the rental unit;
2. The landlord agreed that his 10 Day Notice, dated September 13, 2022, is cancelled and of no force or effect;
3. Both parties agreed to bear their own costs for the \$100.00 filing fees paid for their applications;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications, except for the landlord's monetary claim for unpaid rent.

These particulars comprise the full and final settlement of this dispute for both parties, except for the landlord's monetary claim for unpaid rent. Both parties affirmed 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 and binding and enforceable, which settles this dispute, except for the landlord's monetary claim for unpaid rent.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this hearing. Both parties were given ample and additional time during this hearing, to think about, discuss, negotiate, and decide whether to settle their applications.

Both parties were unable to settle the landlord's unpaid rent claim during this hearing, despite being given multiple opportunities for same, and asked that I make a decision about it. Below are my findings.

Issue to be Decided

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

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 landlord's monetary claim for unpaid rent and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2022. Monthly rent of \$2,500.00 is payable on the first day of each month. The tenants paid a security deposit of \$1,250.00 and the landlord continues to retain this deposit in full. Both parties signed a written tenancy agreement. The tenants continue to reside in the rental unit.

Both parties agreed to the following facts. The tenants owe unpaid rent of \$2,500.00 for each month of July 2022, September 2022, October 2022, November 2022, December 2022, and January 2023, totalling \$15,000.00, to the landlord.

The landlord stated the following facts. He is only seeking half a month's rent of \$1,250.00, from the tenants, for the period from February 1 to 10, 2023, since the

tenants are vacating on February 10, 2023, as per the above agreement. He seeks a monetary order of \$16,250.00 total for unpaid from the tenants.

The tenant stated the following facts. The tenants do not have any money to pay the landlord for unpaid rent. The tenants agree that they owe \$15,000.00 for unpaid rent from July 2022 to January 2023 to the landlord. The tenants agree that they owe rent from February 1 to 10, 2023, to the landlord, but the landlord is asking for half a month's rent of \$1,250.00, even though the tenants are not staying in the rental unit until February 15, 2023.

Analysis

Section 26 of the *Act* requires the tenants to pay rent when it is due under a tenancy agreement. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

At this hearing, both parties agreed that rent of \$2,500.00 is payable on the first day of each month. The landlord provided a copy of the parties' signed written tenancy agreement, which confirms the above information. Both parties agreed that the tenants owe unpaid rent of \$15,000.00 from July 2022 to January 2023, to the landlord. Accordingly, I find that the landlord is entitled to \$15,000.00 for rental arrears, from the tenants. I informed both parties of my decision verbally during this hearing.

I find that the tenants are required to pay full rent to the landlord each month, unless the tenants have an order from an Arbitrator to deduct rent, or emergency repairs are deducted in accordance with section 33 of the *Act*. I find that both do not apply in this case.

Even though the tenants agreed to vacate the rental unit on February 10, 2023, which has not yet occurred, I find that the tenants are required to pay rent for February 2023 to the landlord, as rent is due on the first day of each month. However, since the landlord is only seeking half a month's rent of \$1,250.00 from the tenants, for the period from February 1 to 10, 2023, I find that the landlord is entitled to \$1,250.00 in rental arrears from the tenants.

On a balance of probabilities and for the reasons stated above, I find that the landlord is entitled to a monetary order for \$16,250.00 for unpaid rent, against the tenants.

The landlord continues to hold the tenants' security deposit of \$1,250.00. Over the period of this tenancy, interest is payable on the deposit. No interest is payable for the year 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to February 3, 2023, since the date of this hearing and decision is February 3, 2023. This results in \$2.27 interest on \$1,250.00 for 9.31% of the year based on the RTB online deposit interest calculator.

Even though the landlord did not apply to retain the tenants' security deposit in his application, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$1,250.00 plus interest of \$2.27, totalling \$1,252.27, in partial satisfaction of the monetary claim. I issue a monetary order of \$14,997.73, for the balance, to the landlord.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties 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 1:00 p.m. on February 10, 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 landlord's 10 Day Notice, dated September 13, 2022, is cancelled and of no force or effect.

I order the landlord to retain the tenants' entire security deposit of \$1,250.00 plus interest of \$2.27, totalling \$1,252.27, in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$14,997.73 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's claim for NSF fees of \$300.00 is dismissed with leave to reapply.

Both parties must bear the costs of the \$100.00 filing fees paid for their applications.

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: February 03, 2023

Residential Tenancy Branch