



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FFL; CNC, MNDCT, RR, OLC

### Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee paid for their application, pursuant to section 72.

This hearing also dealt with the tenants' application pursuant to the *Act* for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated November 14, 2022 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order allowing the tenants to reduce rent for repairs, services, or facilities agreed upon but not provided, pursuant to section 65; and
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

"Landlord HB" did not attend this hearing. Landlord VB ("landlord"), the landlords' agent, and the two tenants, tenant FS ("tenant") and "tenant CG," 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 33 minutes.

This hearing began at 11:00 a.m. with all hearing participants present, except the landlord's witness CT. The landlord left the hearing from 11:04 a.m. to 11:06 a.m., claiming that his phone disconnected. I did not discuss any evidence in the absence of the landlord. The landlord's witness SK left the hearing at 11:07 a.m. The landlord's witness CT called in and left the hearing at 11:08 a.m. The landlord's two witnesses did

not hear any testimony or evidence from the parties, they were excluded from the outset, and they did not testify at this hearing. This hearing ended at 11:33 a.m.

All hearing participants provided their names and spelling, except for the landlord's witness CT. The landlords' agent and the tenant both provided email addresses for me to send copies of this decision to both parties after the hearing.

The landlord confirmed that he had permission to represent landlord HB (collectively "landlords"). He said that both landlords co-own the rental unit. He provided the rental unit address. He stated that the landlords' agent had permission to represent both landlords. He identified the landlords' agent as the primary speaker for both landlords at this hearing.

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, all hearing participants, except for the landlords' two witnesses, 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. I informed them that I could not provide legal advice to them or act as their agent or advocate. Both parties had multiple opportunities to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

At the outset of this hearing, the landlords' agent and the tenant both affirmed that they wanted to engage in mediation and settle both applications. Both parties stated that they were ready to proceed, they did not want me to make a decision, and they wanted to voluntarily settle both applications.

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

During this hearing, I informed the tenants that I did not have jurisdiction to decide Criminal Code of Canada offences such as harassment. I notified them that they could contact the police for same. They affirmed their understanding of same.

### Severing the Tenants' Monetary Claims

The following RTB *Rules* are applicable and state (my emphasis added):

#### *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.***

#### *6.2 What will be considered at a dispute resolution hearing*

*The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.*

*The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. **For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.***

During this hearing, I informed both parties about the following information. Rules 2.3 and 6.2 of the RTB *Rules* allow me to sever issues that are not related to both parties' applications. The landlords applied for 2 different claims in their application and the tenants applied for 4 different claims in their application, for a total of 6 different claims.

I informed both parties that they were provided with a priority hearing date, due to the urgent nature of their claims related to an order of possession and cancellation of the 1 Month Notice. I notified them that these were the central and most important, urgent issues to be dealt with at this hearing.

I informed the tenants that their monetary claims for a rent reduction and for damage and loss were dismissed with leave to reapply. I notified them that these monetary claims were non-urgent lower priority issues, and they could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above.

Both of the landlords' claims and 2 of the tenants' 4 claims were dealt with at this hearing. There was insufficient time to deal with the tenants' two monetary claims at this hearing. Both parties submitted voluminous documents and evidence for the tenants' monetary claims. I informed the tenants that they could file a new application

and pay a new filing fee, if they want to pursue their monetary claims in the future. They affirmed their understanding of same.

The tenants were upset about my decision to sever their monetary claims. They repeatedly argued with me about my decision throughout this hearing. They repeatedly asked me to explain my decision and reasons, which I repeatedly did, throughout this hearing.

#### Preliminary Issue – Inappropriate Behaviour by the Tenants during this Hearing

Rule 6.10 of the RTB *Rules* 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 this hearing, the tenants repeatedly interrupted me, argued with me, and repeatedly asked me the same questions. They continued to argue with me regarding their monetary claims, despite the fact that I repeatedly informed them that I could not deal with same at this hearing, as noted in my decision above.

I repeatedly cautioned the tenants, but they continued with their inappropriate behaviour. This hearing lasted longer because of the tenants' repeated interruptions, arguments, and inappropriate behaviour.

However, I allowed the tenants to attend the full hearing, despite their inappropriate behaviour, in order to allow them to settle both applications, as requested by them at the outset of this hearing.

#### 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, turned their minds to

compromise and achieved a resolution of their dispute, except for the tenants' monetary claims.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time, except for the tenants' monetary claims:

1. The tenants agreed to pay the landlords full rent for this tenancy and rental unit, by March 1, 2023;
2. Both parties agreed that this tenancy will end by March 31, 2023, by which date the tenants and any other occupants will have vacated the rental unit, in the event that the tenants abide by condition 1 of the above settlement;
3. Both parties agreed that this tenancy will end pursuant to a two (2) day Order of Possession, if the tenants do not abide by condition 1 of the above settlement;
4. The landlords agreed to bear the cost of the \$100.00 filing fee paid for their application;
5. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both applications, except for the tenants' monetary claims.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties. 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, binding and enforceable, which settle all aspects of this dispute, except for the tenants' monetary claims.

The terms and consequences of the above settlement were reviewed in detail, with both parties during this hearing. Both parties had opportunities to ask questions and to negotiate and discuss the settlement terms in detail. Both parties were given ample and additional time during this hearing, to think about, review, discuss, and negotiate the terms of this settlement.

I repeatedly informed the tenants that they voluntarily chose to settle both applications at the outset of this hearing, after the settlement and hearing options and consequences were repeatedly explained to them by me and they affirmed their understanding of same. The tenants proposed the above move-out date of March 31, 2023, which was accepted by the landlords.

Since both parties did not provide a move-out time during this hearing, I impose a time of 1:00 p.m. This is in accordance with section 37(1) of the *Act*, as noted below (bold emphasis in original):

***Leaving the rental unit at the end of a tenancy***

***37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.***

Therefore, the tenants must vacate the rental unit by 1:00 p.m. on March 31, 2023, if they abide by condition 1 of the above settlement.

**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 discussed with them during the hearing, I issue the attached two (2) day Order of Possession to be used by the landlords **only** if the tenants do not abide by condition 1 of the above settlement. The tenants must be served with this Order. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In the event that the tenants abide by condition 1 of the above settlement, this tenancy continues only until 1:00 p.m. on March 31, 2023.

The landlords' 1 Month Notice, dated November 14, 2022, is cancelled and of no force or effect.

The landlords must bear the cost of the \$100.00 filing fee paid for their application.

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

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Residential Tenancy Branch