



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, CNL, OLC, FFT

Introduction

This hearing dealt with the tenant's application, filed on November 9, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' One Month Notice to End Tenancy for Cause, dated December 16, 2022, and effective January 31, 2023 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property, dated November 1, 2022, and effective January 31, 2023 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 62.

"Landlord SI" did not attend this hearing. Landlord FI ("landlord") and the tenant attended this 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 16 minutes. This hearing began at 11:00 a.m. with only me and the landlord present. The tenant called in late at 11:06 a.m., stating that he had to go to the bathroom at exactly 11:00 a.m., due to a spinal cord injury. I did not discuss any evidence in the absence of the tenant. This hearing ended at 11:16 a.m.

Both parties confirmed their names and spelling. The landlord provided the name and spelling for landlord SI. Both parties provided their email addresses for me to send this decision to them after this hearing.

The landlord stated that he had permission to represent landlord SI, who he said is his wife, at this hearing (collectively “landlords”). He confirmed that he co-owns the rental unit with landlord SI. He provided the rental unit address.

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, both parties separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

The tenant stated that he did not have a copy of his application in front of him during this hearing, because he had a spinal cord injury. He claimed that he did not bring an agent or anyone to assist him at this hearing, despite knowing about his spinal cord injury issues. He said that he had trouble hearing because of his spinal cord injury.

The tenant did not provide or point me to any medical documentary evidence, regarding his above health issues.

I informed the tenant that he had ample time from filing this application on November 9, 2022, to this hearing date of March 23, 2023, to obtain an agent, advocate, or anyone else to assist him at this hearing, given his health issues.

I asked the tenant to inform me if he had trouble hearing me at all during this hearing, and he agreed to same. I informed the tenant that I was speaking as loudly and as clearly as I could, so he could hear me properly; the tenant agreed that I was, and he could hear me properly. I repeated and rephrased information to the tenant, during this hearing, to assist him in hearing me properly.

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

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant’s application to correct the spelling of the landlord’s first name and to correct the spelling of the landlord’s email address. The landlord consented to same. I find no prejudice to either party in making these amendments.

At the outset of this hearing, both parties agreed that the tenant was currently in the process of moving out of the rental unit. I informed the tenant that his application for an order requiring the landlords to comply with the *Act, Regulation* or tenancy agreement was dismissed without leave to reapply, because it relates to an ongoing tenancy only. The tenant affirmed his understanding of same.

During this hearing, the landlord asked for monetary compensation from the tenant. He claimed that the RTB told him to upload evidence of same, so he would be granted monetary compensation. I informed the landlord that he did not file an RTB application or pay a filing fee, so I could not deal with same at this hearing. The landlord affirmed his understanding of same.

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 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 1:00 p.m. on March 31, 2023, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlords agreed that their 1 Month Notice, dated December 16, 2022, and effective January 31, 2023, is cancelled and of no force or effect;
3. The landlords agreed that their 2 Month Notice, dated November 1, 2022, and effective January 31, 2023, is cancelled and of no force or effect;
4. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his application, except for the filing fee.

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 16-minute hearing. Both parties were provided with ample time during this hearing to think about, review, discuss, negotiate, and decide about the above settlement terms.

Filing Fee

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

The filing fee is a discretionary award usually issued by an Arbitrator after a full hearing is conducted on the merits of the applicant's application, a decision is made by the Arbitrator, and the applicant is successful.

Both parties settled the tenant's application at this hearing, and I dismissed a claim without leave to reapply. I was not required to conduct a full hearing or make a decision on the merits of the tenant's application.

For the above reasons, I dismiss the tenant's 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 discussed with both parties during this hearing, I issue the attached Order of Possession to be used by the landlord(s) **only** if the tenant and any other occupants fail to vacate the rental premises by 1:00 p.m. on March 31, 2023, as per condition #1 of the above agreement. 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 and enforced as an Order of the Supreme Court of British Columbia.

The landlords' 1 Month Notice, dated December 16, 2022, and effective January 31, 2023, is cancelled and of no force or effect.

The landlords' 2 Month Notice, dated November 1, 2022, and effective January 31, 2023, is cancelled and of no force or effect.

The remainder of the tenant's application 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: March 23, 2023

Residential Tenancy Branch