



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on February 17, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession based on the landlord's One Month Notice to End Tenancy for Cause, dated February 2, 2023, and effective March 1, 2023 ("1 Month Notice"), pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 62.

The landlord, the landlord's agent, 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 29 minutes. This hearing began at 1:30 p.m. with only me, the landlord, and the landlord's agent present. The tenant called in late at 1:33 p.m. I did not discuss any evidence in the absence of the tenant. This hearing ended at 1:59 p.m.

All hearing participants confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord stated that her agent, who she said is her husband, had permission to represent her at this hearing. The landlord confirmed that she co-owns the rental unit

with the landlord's agent. She provided the rental unit address. She identified herself as the primary speaker for the landlord 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 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, which I answered. Neither party made any adjournment or accommodation requests.

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.

Preliminary Issue – Service of Documents

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 the tenant was duly served with the landlord's application.

The tenant agreed that she received the landlord's application on February 22, 2023. She confirmed that she did not provide any evidence for this hearing. She said that she had a medical condition, and she was really busy, so she did not have time to submit evidence. She asked if she could submit evidence after this hearing.

I informed the tenant that she did not submit any medical documentary evidence of her medical condition. I notified her that she could not submit evidence after this hearing. The landlord would not have a chance to respond. I informed the tenant that she had ample time prior to this hearing on March 17, 2023, to submit evidence and failed to do so. In any event, I did not consider any evidence at the hearing or in this decision, since both parties settled, and I did not decide the merits of this application.

I find that I have jurisdiction to hear this application, since both parties agreed that they do not share a kitchen or bathroom with each other, so this application is not excluded by section 4(c) of the *Act*. Both parties agreed that the rental unit, which the tenant currently occupies, is a "coach house" on top of a garage, and the landlord occupies a separate "main house" at the same residential property.

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 landlord agreed that her 1 Month Notice, dated February 2, 2023, and effective March 1, 2023, is cancelled and of no force or effect;
3. The tenant agreed to pay the landlord \$3,476.88 total, which includes \$3,350.00 for rent and \$126.88 for utilities, which is unpaid from December 1, 2022 to March 31, 2023;
4. Both parties agreed that the tenant's security deposit of \$725.00 will be dealt with at the end of this tenancy in accordance with section 38 of the *Act*;
5. The landlord agreed that this settlement agreement constitutes a final and binding resolution of her 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 29-minute hearing. Both parties were provided with ample time during this hearing to think about, discuss, negotiate, and decide about the above settlement terms.

The landlord and her agent were given additional time to calculate the above unpaid rent and utilities, during this hearing, as per their request.

Filing Fee

Both parties did not settle the landlord's application to recover the \$100.00 filing fee. The landlord 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 landlord's application at this hearing. I was not required to conduct a full hearing or make a decision on the merits of the landlord's application.

For the above reasons, I dismiss the landlord'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 **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 landlord's 1 Month Notice, dated February 2, 2023, and effective March 1, 2023, is cancelled and of no force or effect.

In order to implement the above settlement and as discussed with both parties during this hearing, I issue a monetary Order in the landlord's favour in the amount of \$3,476.88. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant fails to pay the landlord \$3,476.88, as per condition #3 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 in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's security deposit of \$725.00 will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

The landlord's 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: March 17, 2023

Residential Tenancy Branch