



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL; CNR, CNL, DRI, PSF

Introduction

This hearing dealt with the landlords' application, filed on May 10, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

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

This hearing also dealt with the tenants' application, filed on February 21, 2023, pursuant to the *Act* for:

- cancellation of the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order regarding a disputed additional rent increase, pursuant to section 43;
- an order requiring the landlords to provide services or facilities required by law, pursuant to section 65.

"Tenant KK" did not attend this hearing. The two landlords, landlord SK ("landlord") and "landlord TP" (collectively "landlords") and tenant RB ("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 41 minutes from 9:30 a.m. to 10:11 a.m.

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

The landlord confirmed that both landlords co-own the rental unit. She provided the rental unit address. She identified herself as the primary speaker for the landlords at this hearing. Landlord TP agreed to same.

The tenant confirmed that he had permission to present tenant KK 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, 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. 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.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with section 89 of the *Act*, I find that both parties were duly served with other party’s application.

The tenant stated that he did not receive any evidence from the landlords. The landlord stated that the landlords served their evidence to the tenants on May 17, 2023. She provided two Canada Post tracking numbers verbally during this hearing. As both parties voluntarily settled this application, I do not find it necessary to make findings regarding service of the landlords’ evidence to the tenants.

Preliminary Issue – Severing Both Parties’ 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.***

Rules 2.3 and 6.2 of the RTB *Rules of Procedure* allow me to sever issues that are not related to both parties' main applications. The landlords applied for 3 different claims and the tenants applied for 4 different claims, for a total of 7 different claims in both parties' applications.

Both parties were provided with a priority hearing date, due to the urgent nature of their claims for an order of possession, to cancel the landlords' 10 Day Notice and 2 Month Notice, and an order requiring the landlords to provide services or facilities required by law. These are the central and most important, urgent issues to be dealt with at this hearing.

I informed both parties that their remaining monetary claims are non-urgent lower priority issues, and they can be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above.

I informed both parties that after 41 minutes of this 60-minute maximum hearing time, there was insufficient time to deal with both parties' remaining monetary claims at this hearing. Both parties declined to settle these monetary issues at this hearing. Both parties submitted voluminous documents and evidence for these claims. Both parties disputed the amounts of rent and utilities payable and provided two completely different tenancy agreements with two different amounts of rent and utilities. Both parties alleged fraud regarding the above documents.

I informed both parties that the landlords' remaining claim for a monetary order for unpaid rent and utilities, and the tenants' remaining claim for an order regarding a disputed additional rent increase, were severed and dismissed with leave to reapply. I notified them that they can file new RTB applications, if they want to pursue these claims in the future. They affirmed their 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 this hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute, except for the monetary claims.

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

1. Both parties agreed that this tenancy will end by 1:00 p.m. on August 31, 2023, by which time the tenants and any other occupants will have vacated the rental unit;
2. Both parties agreed that all of the landlords' notices to end tenancy, issued to the tenants, to date, are cancelled and of no force or effect;
3. Both parties agreed that there will only be a total of 2 occupants occupying the rental unit, for the remainder of this tenancy;
 - a. Both parties agreed that tenant KK is permitted to vacate the rental unit and the tenant's wife is permitted to occupy the rental unit together with the tenant;
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 parties' applications, except for the monetary claims.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties, except for the monetary claims. 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 monetary claims.

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

The tenant affirmed that he had permission to make this agreement on behalf of tenant KK.

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(s) and any other occupants fail to vacate the rental premises by 1:00 p.m. on August 31, 2023, as per condition #1 of the above agreement. The tenant(s) must be served with a copy of 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 landlords must bear the cost of the \$100.00 filing fee paid for their application.

The landlords' application for a monetary order for unpaid rent and utilities is dismissed with leave to reapply.

The tenants' application for an order regarding a disputed additional rent increase is dismissed with 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: June 20, 2023

Residential Tenancy Branch