Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, RR, RP, OLC, FFT
RR, OLC, FFT

Introduction

This hearing dealt with two Applications for Dispute Resolution (the Applications) and an amendment that were filed by the Tenants on March 30, 2023, April 25, 2023, and June 16, 2023, under the *Residential Tenancy Act* (the Act).

In the first Application filed on March 30, 2023, the Tenants sought:

- Cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice);
- Authorization to reduce their rent by $900.00 for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlords to make repairs to the rental unit that have been requested by the Tenants but not completed;
- An order for the Landlords to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

In the second Application filed on April 25, 2023, the Tenants sought:

- Authorization to reduce their rent by $21,600.00 for repairs, services, or facilities agreed upon but not provided;
- An order for the Landlords to comply with the Act, regulations, or tenancy agreement; and
- Recovery of the filing fee.

In the amendment to the second Application filed on June 16, 2023, the Tenants sought:

- To increase the amount of the rent reduction to $35,000.00; and

- An order for the Landlords to comply with the Act, regulations, or tenancy agreement.

The hearing was convened by telephone conference call at 9:30 am on July 6, 2023, and was attended by the Tenants, the Landlord, and FQ, who was legal counsel for the Landlords. All testimony provided was affirmed. As the Landlords acknowledged service of the above noted Applications, the amendment, and the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service dates or methods, I found them to be sufficiently served for the purposes of the Act and the hearing proceeded as scheduled. The participants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The participants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The participants were also advised that personal recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration as set out above, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

Preliminary Matters

In their Applications and amendment, the Tenants sought remedies under multiple unrelated sections of the Act. Rule 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a One Month Notice, I found that the priority claim related to validity of the One Month Notice and continuation or end of the tenancy. As I determined that the other claims were not sufficiently related to the validity of the One Month Notice, and the continuation or end of the tenancy, I exercised my discretion to dismiss them with leave to reapply.

The Tenants were dissatisfied with this, and argued that their monetary claims are related to the One Month Notice and should therefore not be severed. They argued that the One Month Notice was served in retaliation to their attempts to enforce their rights under the Act with regards to repairs, exclusive possession of the rental unit, and quiet enjoyment, and two previous decisions from the Branch regarding repairs and quiet enjoyment that were not in favor of the Landlords. While I accepted that some of the facts and evidence for the issues between the claims made by the Tenants overlap, I determined that the findings of fact required between the different claim types, would differ significantly as different sections of the Act and regulations, and different policy guidelines apply to each of the claims. Further to this, I noted that the burden of proof was on the Landlord in relation to the validity of the One Month Notice, as opposed to the Tenants, who would bear the burden of proof in relation to all other claims. As a result, I dismissed the Tenants' arguments that their claims for repairs, rent reductions, and orders for the Landlords to comply with the Act, regulations, and tenancy agreement should not be severed. These claims were therefore dismissed with leave to reapply, except for the claim for recovery of the second filing fee, which was dismissed without leave to reapply, as the Tenants could have amended their first Application at no additional cost, rather than filing a second Application and paying a second filing fee.

The hearing therefore proceeded as scheduled based only on the claim for cancellation of the One Month Notice and recovery of the first $100.00 filing fee. Upon advising the parties of this, they disclosed that the tenancy has now ended and that the Landlords already have possession of the rental unit. Although the parties initially stated that the One Month Notice before me for consideration had been previously heard and decided by the Residential Tenancy Branch (Branch), this is inaccurate. After some discussions with the parties and a review of relevant Branch records, I determined that the One Month Notice before me for consideration had not previously been heard and decided by the Branch, and that the tenancy had ended due to service of a different notice to end tenancy, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice).

Although the parties disagreed about whether the Tenants, as part of another hearing with the Branch, had either agreed to, or been ordered by the Branch to, withdraw previous claims or applications so that all matters claimed by the Tenants could be heard before me on July 6, 2023, at 9:30 am, I was not satisfied this was the case. Further to this, I found that even if this had been the case, it would neither be possible nor practical for me to hear all of the claims made by the Tenants in their Applications and amendments during the 60-minute hearing, of which there was only a portion left. I also advised the parties that all hearings with the Branch are scheduled based on their

urgency, and that they had received the 9:30 priority hearing spot to resolve their priority claims, such as possession of the rental unit, claims for repairs, and claims for authority to reduce ongoing rent for services or facilities agreed upon but not provided, not to hear a $35,000.00 monetary claim in relation to a tenancy that has already ended.

I advised the parties that monetary claims for tenancies that are no longer ongoing, are routinely scheduled at 1:30 pm, and are subject to significantly longer hearing wait times as there are fewer monetary hearing spots per day. I advised the parties that applicants are not permitted to queue jump by transitioning a priority hearing to a monetary only hearing, and that applicants should ensure that all claims made in an application, cross-application, or amendment are sufficiently related to avoid disappointment and delays due to severing or dismissal of unrelated claims.

I advised the parties that my decision to sever matters unrelated to validity of the One Month Notice stands, and as the tenancy has ended and there are no further priority claims to be resolved for an ongoing tenancy, the hearing would be concluded. The Tenants were advised that they remain at liberty to re-file their monetary claims, should they wish to do so. They were also provided with information on the submission and importance of evidence, evidence size limits, the burden of proof in Branch hearings, numerous sections of the Act, and the requirements for establishing a claim for monetary compensation as set out under section 7 of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #16. The parties were also advised, among other things, of their right to settle matters outside the dispute resolution process, and the fact that Branch decisions are final and binding, subject only to the correction, clarification, and review consideration provisions of the Act, and judicial review at the Supreme Court of British Columbia.

Conclusion

As the parties agreed that possession of the rental unit has been resolved, and that the Landlords now have possession of the rental unit, the Tenants' claim for cancellation of the One Month Notice is dismissed, without leave to reapply, as I determined that the matter of validity of the One Month Notice was moot with regards to possession of the rental unit. As a result, no findings of fact on the validity of the One Month Notice have been made. The Tenants' claim for recovery of the $100.00 filing fee paid for the first Application was also dismissed, without leave to reapply, as their Application seeking cancellation of the One Month Notice was dismissed, and all other claims were moot due to the ending of the tenancy, or severed pursuant to rule 2.3 of the Rules of Procedure, or both.

The remaining claims made by the Tenants in their Applications and amendment were severed pursuant to rule 2.3 of the Rules of Procedure and dismissed with leave to reapply, except for their claim for recovery of the $100,00 filing fee paid for the second Application, which was dismissed without leave to reapply.

Although the parties were verbally advised on the date of the hearing, July 6, 2023, of the decision, I acknowledge that the written decision has been issued more than 30 days after the close of the proceedings. I sincerely apologize for this delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if it is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the fact that it was issued more than 30 days after the close of the proceedings.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: August 16, 2023

Residential Tenancy Branch