

DECISION

Introduction

This hearing dealt with the landlord's application for dispute resolution, filed on May 23, 2023, under the *Residential Tenancy Act* ("Act") for:

- an order of possession based on a mutual agreement to end the tenancy, under sections 44 and 55 of the *Act*;
- a monetary order for unpaid rent of \$554.00, under section 67 of the *Act*;
- a monetary order of \$1,344.00 for damage to the rental unit, under sections 32 and 67 of the *Act*;
- authorization to retain the tenant's security deposit of \$400.00, under section 38 of the *Act*; and
- authorization to recover the \$100.00 filing fee paid for this application, under section 72 of the *Act*.

The landlord's two agents, "landlord TB" and "landlord LD," 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 56 minutes from 11:00 a.m. to 11:56 a.m.

The tenant disconnected from this hearing at 11:01 a.m. and returned at 11:03 a.m. She said that she called into this hearing at 10:30 a.m., and she was put on hold. I did not discuss any evidence in her absence.

All hearing participants confirmed their names and spelling. Landlord TB provided her email address, and the tenant provided her mailing address for me to send copies of this decision to both parties after this hearing.

Landlord TB said that she is a housing coordinator, and landlord LD said that she is a supervisor. Both landlord's agents stated that they are employed by the landlord company ("landlord") named in this application and that they had permission to speak on its behalf.

Landlord TB identified herself as the primary speaker for the landlord. Landlord LD agreed to same. Landlord TB confirmed the legal name of the landlord. She said that the landlord owns the rental unit. She 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, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I repeatedly cautioned the tenant about interrupting me, speaking at the same time as me, and not complying with my directions, during this hearing. I repeatedly answered the tenant’s questions, and repeatedly explained and clarified information for the tenant, throughout this hearing. I cautioned the tenant that she could be removed from this hearing, if she did not comply with my directions. The tenant affirmed her understanding of same.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed both parties that I could not provide legal advice to them. 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.

The tenant initially expressed her desire to settle, claiming that she was planning to move out of the rental unit in any event. The tenant proposed the move-out date of November 1, 2023, which the landlord’s agents agreed to do.

The landlord’s agents were given additional time during this hearing to speak privately to each other, regarding the hearing and settlement options.

Preliminary Issues – Service of Documents, Adjournment, and Severing

The landlord’s agents stated that the tenant was served with the landlord’s Notice of Dispute Resolution Proceeding (“NODRP”) and evidence on May 25, 2023, by way of registered mail, to the rental unit, where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord’s agents confirmed the tracking number verbally during this hearing.

The tenant stated that she did not receive a copy of the landlord's NODRP, but she received the landlord's evidence from May and July 2023. She said that the landlord informed her about this hearing date, so she called into the RTB and was told the phone number and access code to call into this hearing.

I do not find it necessary to make a decision regarding service of the landlord's NODRP to the tenant, as both parties voluntarily settled this application at this hearing.

The tenant initially requested an adjournment of this hearing because she did not receive a copy of the landlord's NODRP, which the landlord opposed. I informed both parties that I would not make a decision regarding the tenant's adjournment request, because both parties voluntarily settled this application at this hearing. Both parties affirmed their understanding of same and did not object to my decision.

Prior to both parties' settlement discussions, I informed the landlord's agents that, pursuant to Rules 2.3 and 6.2 of the RTB *Rules*, the landlord's monetary claims could be severed with leave to reapply, as they agreed that the landlord's claims for rent, damages, and the security deposit were unrelated to the landlord's priority application for an order of possession based on a mutual agreement to end tenancy. They stated that they wanted to settle their monetary application, they did not want to pursue their monetary claims for rent and damages against the tenant, and they would deal with the tenant's security deposit at the end of this tenancy, as per section 38 of the *Act*. The tenant did not object to same.

I was not required to sever the landlord's monetary claims as both parties voluntarily settled these issues at 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 this hearing, the parties discussed the issues between them, turned their minds to compromise, and achieved a resolution of their dispute.

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

1. Both parties agreed that this tenancy will end by 1:00 p.m. on November 1, 2023, by which time the tenant and any other occupants will have vacated the rental unit;
2. The landlord agreed to bear the cost of the \$100.00 filing fee paid for this application;
3. Both parties agreed that the tenant's security deposit of \$400.00 will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*;
4. The landlord agreed not to pursue any future claims or applications against the tenant, regarding the landlord's monetary claims for unpaid rent of \$554.00 and damages of \$1,344.00;
5. The landlord agreed that this settlement agreement constitutes a final and binding resolution of their application.

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

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 56-minute hearing. Both parties had opportunities to think about, ask questions, speak privately, negotiate, discuss, and decide about the above settlement terms.

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 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 November 1, 2023. The tenant must be served with 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 must bear the cost of the \$100.00 filing fee paid for this application.

The tenant's security deposit of \$400.00 will be dealt with at the end of this tenancy, in accordance with section 38 of the *Act*.

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: August 8, 2023

Residential Tenancy Branch