



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, DRI, LRE, AS, OLC

Introduction

This hearing dealt with the tenant's application, filed on August 31, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated August 29, 2023 and effective on September 30, 2023 ("1 Month Notice"), pursuant to section 47;
- a monetary order of \$23,860.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation"), or tenancy agreement, pursuant to section 67;
- an order regarding a disputed additional rent increase of \$500.00, pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld, pursuant to section 65; and
- an order requiring the landlord to comply with the *Act*, *Regulation*, or tenancy agreement, pursuant to section 62;

The landlord, the landlord's agent, the tenant, and the tenant's moral support person 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 47 minutes from 11:00 a.m. to 11:47 a.m.

The tenant intended to call a witness, "witness RM," who was excluded from the outset, left the hearing at 11:05 a.m., did not return to testify, and did not hear evidence from either party.

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

The landlord confirmed that she owns the rental unit. She provided the rental unit address. She identified her agent as her primary speaker. She said that her agent had permission to represent her. The landlord's agent confirmed that she is the landlord's daughter-in-law.

The tenant confirmed that her moral support person was present to support her only, and she would not testify. The tenant identified herself as the primary speaker.

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 that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. I informed them that I could not provide legal advice to them, and they could retain a lawyer for same. I notified them that the RTB does not deal with criminal offences under the *Criminal Code of Canada*, and they could contact the police regarding same. 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 landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package. The tenant confirmed receipt of the landlord's evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

Preliminary Issue – Severing the Tenant's Monetary Application

The following RTB *Rules* are applicable and state the following (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* allow me to sever issues that are not related to the tenant's main application. I informed both parties that the tenant applied for 6 different claims in this application. I dealt with 4 of the tenant's 6 claims at this hearing.

The tenant was provided with a priority hearing date, due to the urgent nature of her application to cancel the landlord's 1 Month Notice. I informed both parties that this was the central and most important, urgent issue to be dealt with at this hearing. I notified them that the tenant's two monetary claims were non-urgent lower priority issues, and they could be severed at a hearing. This is in accordance with Rules 2.3 and 6.2 of the RTB *Rules* above. Both parties affirmed their understanding of same.

After 47 minutes of this 60-minute maximum hearing time, there was insufficient time to deal with the tenant's two monetary claims, totalling \$24,360.00, at this hearing. Both parties declined to settle these monetary issues at this hearing, even though they were offered multiple opportunities to do so, and they discussed settlement. Both parties submitted voluminous documents and evidence for these claims.

I informed both parties that the tenant's two monetary claims, for a monetary order of \$23,860.00 for compensation for damage or loss under the *Act, Regulation*, or tenancy agreement, and an order regarding a disputed additional rent increase of \$500.00, were severed and dismissed with leave to reapply. I notified them that the tenant can file a new RTB application, if she wants to pursue these claims in the future. Both parties 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 tenant's two monetary claims.

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

1. Both parties agreed that this tenancy will end by 12:00 p.m. on February 1, 2024, 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 August 29, 2023, is cancelled and of no force or effect;
3. The tenant agreed that this settlement agreement constitutes a final and binding resolution of her application, except for her two monetary claims.

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

The terms and consequences of the above settlement were reviewed in detail, with both parties during this lengthy 47-minute hearing. Both parties were provided with ample and additional time during this hearing to think about, ask questions, discuss, negotiate, and decide about the above settlement terms.

The landlord was given ample and additional time during this hearing to speak privately with her agent and for her agent to translate information to her in English. The landlord and her agent repeatedly reconfirmed the above terms of settlement, repeatedly translated the same information, and repeatedly asked the same questions regarding the above settlement.

The tenant was given ample time during this hearing to speak privately with her moral support person.

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 12:00 p.m. on February 1, 2024, 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 tenant's two monetary claims, for a monetary order of \$23,860.00 for compensation for damage or loss under the *Act, Regulation*, or tenancy agreement, and an order regarding a disputed additional rent increase of \$500.00, are severed and 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: December 08, 2023

Residential Tenancy Branch