



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application for dispute resolution, filed on November 3, 2023, under the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated October 23, 2023, and effective on December 31, 2023 ("2 Month Notice"), under section 49 of the Act.

The landlord, the tenant, and the tenant's lawyer 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 from 11:00 a.m. to 11:29 a.m.

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.

The landlord stated that he owns the rental unit. He provided the rental unit address.

The tenant affirmed that his lawyer had permission to represent him at this hearing. He identified his lawyer as his 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 to both parties. I informed them that I could not provide legal advice to them, and they could retain a lawyer for same. I informed them that my role as an Arbitrator is to make a decision and enforce a settlement. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the two landlord-respondents, the landlord's father and his company name, and add the landlord's name as a landlord-respondent. The landlord confirmed that the company was not a real corporation, as there were no annual filings. The landlord affirmed that only he owns the rental unit, not his father or the company. The landlord and the tenant's lawyer both consented to this amendment during this hearing. I find no prejudice to either party in making this amendment.

Preliminary Issue – 2 Month Notice

At the outset of this hearing, the tenant's lawyer stated that the tenant was vacating the rental unit on December 31, 2023, as he found another place to live. She said that the tenant is moving out on the effective date of the notice because he did not want to wait for this hearing, potentially be evicted, and risk being homeless. She claimed that the tenant wanted to pursue 12 month rent compensation against the landlord for not using the rental unit for the reason on the notice because he believed it was not issued in good faith. The landlord said that he was not aware that the tenant was moving out, as he only found out at this hearing.

I informed both parties that I would not make a decision on the merits of the tenant's application because the tenant was vacating the rental unit on December 31, 2023, 10 days after this hearing on December 21, 2023. The tenant's lawyer then repeatedly stated that the tenant would not move out and he would remain in the unit because he believed the notice was issued in bad faith and he wanted to pursue a 12 month rent compensation claim. I repeatedly informed her that I could not make a decision regarding the merits of the notice because the tenant was moving out, so the issue was moot and a pure academic exercise. I repeatedly notified her that I was not making a decision about a 12 month rent compensation claim, because the tenant did not apply for same, he was still occupying the rental unit, and he had not moved out yet, as required by section 51 of the *Act*.

The tenant and his lawyer then agreed that the tenant was vacating the rental unit on December 31, 2023. They both agreed to an order of possession issued to the landlord against the tenant, effective on January 1, 2024, as noted below.

Settlement Terms

Pursuant to section 63 of the *Act*, 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 filing fee.

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

1. Both parties agreed that this tenancy will end by 9:00 a.m. on January 1, 2024, by which time the tenant and any other occupants will have vacated the rental unit;
2. The tenant agreed that this settlement agreement constitutes a final and binding resolution of his 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 tenant's 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 tenant's 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, ask questions, discuss, negotiate, and decide about the above settlement terms.

The tenant affirmed that he was making this agreement with the assistance and legal advice of his lawyer.

Filing Fee

The tenant's lawyer asked that I make a decision about the \$100.00 application filing fee, as she said the tenant was still pursuing this claim. The landlord disputed this claim. Both parties were given an opportunity to settle this claim, and declined to do so.

A filing fee is a discretionary award usually issued by an Arbitrator if an applicant party is successful after a decision is made by the Arbitrator after a hearing is conducted on the merits of the applicant's application. I was not required to make a decision based on the merits of the tenant's application, as both parties agreed to voluntarily settle it. Therefore, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord, and this claim is dismissed 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 9:00 a.m. on January 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 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 *Act*.

Dated: December 21, 2023

Residential Tenancy Branch