



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF; CNR, MNR, MNDC, MNSD, OLC, RR, FF

Introduction

This hearing dealt with the landlords' application against both tenants, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant company's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy Unpaid Rent or Utilities, dated July 6, 2017 ("10 Day Notice"), pursuant to section 46;
- a monetary order for the cost of emergency repairs and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of the security deposit, pursuant to section 38;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62;
- an order to allow the tenant company to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for its application, pursuant to section 72.

The two landlords, the two landlords' agent and the individual tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The two landlords confirmed that their agent had permission to speak on their behalf at this hearing. The tenant

confirmed that he was the director of the “tenant company” named in this application and that he had authority to speak on its behalf as an agent.

This hearing lasted approximately 100 minutes in order to allow both parties to negotiate a full settlement of this application. The hearing began at 11:00 a.m. with me, the two landlords and their agent present. The tenant called in late at 11:02 a.m. I informed the tenant about what occurred in his absence. The hearing ended at approximately 12:40 p.m.

Both parties confirmed receipt of the other party’s application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party’s application.

Both the landlords and I had not received the tenant company’s written evidence package prior to the hearing. The tenant claimed that he mailed it out to the landlords and the Residential Tenancy Branch (“RTB”) on September 22, 2017 from California. The tenant company did not provide an original receipt, tracking number or tracking printout to confirm this service, as required by Residential Tenancy Policy Guideline 12. The tenant confirmed that he checked the tracking information prior to the hearing and was informed that the mail did not reach the landlords or the RTB. As per sections 88 and 90 of the *Act*, I find that the landlords were not served with the tenant company’s written evidence package.

Preliminary Issue – Jurisdiction to Hear Both Applications

At the outset of the hearing, the tenant raised a jurisdictional argument, indicating that I did not have authority to hear these applications because this was not a tenancy, but rather a rent-to-own agreement where the tenant company intended to purchase the landlord’s unit. The landlords disagreed, indicating that this was a tenancy. Both parties agreed that no written rent-to-own agreement was signed, nor was a purchase and sale agreement signed; the tenant claimed that a verbal rent-to-own agreement was reached and he unsuccessfully attempted to have the landlords sign a purchase and sale agreement. Both parties agreed that only a written tenancy agreement was signed. The tenant claimed that a portion of his monthly rent was supposed to be applied towards the purchase price for this unit within two years.

During the hearing, I informed both parties that I found that I had jurisdiction to hear both parties’ applications because this is a residential tenancy where both parties

signed a residential tenancy agreement for the tenant company to rent the landlords' rental unit for a monthly amount. No written purchase and sale agreement was signed between the parties and in fact, the landlords rejected such a proposal by the tenant as per both parties' testimony. Furthermore, no written rent-to-own agreement was signed and I find that the tenant company failed to prove a verbal contract in this regard.

Preliminary Issue – Adjournment Request by Tenant Company

At the outset of the hearing, the tenant requested an adjournment of only the monetary portion of the tenant company's application. He stated that he was prepared to deal with the landlords' entire application, as well as a portion of the tenant company's application to cancel the landlord's 10 Day Notice. The tenant claimed that he did not have sufficient time to submit his evidence to the landlord and the RTB prior to the hearing, due to the recent wildfires in California, which is where he resides. He stated that he sent evidence to the landlord and the RTB on September 22, 2017, by way of registered mail, which he was told was not delivered. He further claimed that he sent a written adjournment request to the landlord and the RTB on the morning of the hearing, which I did not receive prior to the hearing but the landlords claimed that they did.

The landlords opposed the tenant company's adjournment request, stating that this matter had been ongoing for years and that they wanted finality in an expeditious manner.

During the hearing, I advised both parties that I was not granting an adjournment of the tenant company's monetary application. I did so after taking into consideration the criteria established in Rule 7.9 of the *RTB Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that the tenant company filed this application on its own accord, as no one required or forced it to do so. The application was filed prior to the landlords' application being filed. At the time of that filing on July 21, 2017, the tenant company was immediately notified of this hearing date on October 20, 2017. The tenant company had approximately three months to prepare for this hearing and to gather any relevant evidence to submit with its application. The tenant company waited until less than a month before the hearing on September 22, 2017, to send out additional evidence. This is despite the fact that the tenant has employees who live in the rental unit and work in British Columbia, as per his own evidence, who could have delivered the evidence on his behalf, or he could have had another agent do so.

Moreover, the tenant stated that he was a lawyer called to the bar in the State of California. Therefore, I find that he has or should have greater legal knowledge and understanding of legal processes than a layperson and that he is aware or should have been aware of the RTB *Rules of Procedure* regarding timing and service of evidence and should have respected these deadlines and prepared for this hearing accordingly.

I notified the parties that I would make a decision regarding whether to dismiss the tenant company's monetary application with or without leave to reapply. However, the tenant, on his own accord, decided to settle this portion of the tenant company's application, along with the remainder of the tenant company's and the landlords' applications.

Analysis

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 the 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 7, 2017, by which time the tenant company and any other occupants will have vacated the rental unit;

2. The tenant company agreed to leave all appliances, including the tenant's newly-purchased dishwasher, washer, dryer, thermostat, and lock at the rental unit when the tenant company vacates;
3. The tenant company agreed to pay the landlords \$7,650.00 by way of a bank draft to be given by an agent of the tenant company to the landlords in person at 1:00 p.m. November 7, 2017, which the landlords agreed to accept towards all outstanding rent for this tenancy until November 7, 2017;
4. The landlords and an agent of the tenant company agreed to meet at the rental unit at 1:00 p.m. on November 7, 2017, in order for an agent of the tenant company to return the keys to the landlords and pay the landlords rent as per condition #3 above;
5. The landlords agreed that any notices to end tenancy issued to the tenant and the tenant company during this tenancy to date, are hereby cancelled and of no force or effect;
6. Both parties agreed that the tenant company's security deposit of \$1,275.00 will be dealt with at the end of this tenancy in accordance with section 38 of the Act;
7. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both parties' applications made at this hearing.

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.

During the hearing, both parties understood and agreed that the order of possession and the monetary order would be issued in the name of the tenant company only, not the tenant personally.

Conclusion

To give effect to the settlement reached between the parties and as advised to both parties during the hearing, I issue the attached Order of Possession to be used by the landlords **only** if the tenant company and any other occupants fail to vacate the rental premises by 1:00 p.m. on November 7, 2017. The tenant company must be served with this Order in the event that the tenant company and any other occupants fail to vacate the rental premises by 1:00 p.m. on November 7, 2017. Should the tenant company fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, and as advised to both parties during the hearing, I issue a monetary Order in the landlords' favour in the amount of \$7,650.00. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenant company fails to pay the landlords \$7,650.00 as per condition #3 of the above agreement. The tenant company must be served with a copy of this Order. Should the tenant company fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 23, 2017

Residential Tenancy Branch