



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC, OPT, O, FF

Introduction

This hearing dealt with cross applications.

The Landlord filed an Application for Dispute Resolution, in which she made application for an Order of Possession.

The Tenant filed an Application for Dispute Resolution, in which he made application for an Order of Possession; a monetary Order for money owed for compensation for damage or loss; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is apparent from information attached to the Application for Dispute Resolution that the Tenant is also seeking an Order requiring the Landlord to repair the rental unit, and his Application for Dispute Resolution was amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issues to be decided are whether this tenancy has been frustrated; whether either party is entitled to an Order of Possession; whether the Tenant is entitled to compensation for expenses he incurred while living away from the rental unit; and whether the Tenant is entitled to recover the filing fee for the cost of this Application for Dispute Resolution from the Landlord.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 1998; that it is a month-to-month tenancy; that the rental unit was flooded on January 11, 2009; that the flood was caused by broken water main belonging to the City of Victoria; and that the Tenant vacated the rental unit on January 11, 2009 as a result of the flood; that the flood caused a significant amount of damage to the rental unit; that the Landlord provided the Tenant with a letter, dated January 12, 2009, which stated that the tenancy agreement had been frustrated and that the tenancy was ending immediately; that the Landlord enclosed a cheque for \$739.62 with the letter dated January 12, 2009, which represented the return of the prorated rent for January of 2009 and the Tenant's security deposit, plus interest; that legal counsel for the Tenant provided the Landlord with a letter, dated January 26, 2009, in which counsel advised that the Tenant will not be returning the keys to the rental unit as he did not believe the tenancy agreement was frustrated; that a money order in the amount of \$304.68, which represents the return of the Tenant's security deposit plus interest, was provided to the Landlord by counsel for the Tenant; that the Landlord subsequently returned the money order for \$304.68 to counsel for the Tenant; that the Tenant still has some furnishings in the rental unit; and that the Tenant still has some personal belongings on the porch attached to the rental unit.

The Landlord and the Tenant submitted photographs, which establish that the rental unit had been flooded, resulting in significant damage.

The Landlord submitted a letter from Down's Construction Ltd., which establishes that a portion of the drywall and insulation in the rental unit needed to be replaced; that the cabinets need to be replaced; and that the flooring needs to be replaced as a result of the flood. The Landlord stated that she expects the repairs to the rental unit will be complete in approximately one week. The Tenant submitted a letter from the owner of Duncan Valley Timber, dated February 16, 2009, who stated that he estimates the rental unit will be habitable by March 15, 2009.

The Tenant submitted case law that relate to frustrated contracts, which I reviewed prior to rendering this decision.

The Tenant contends that this tenancy was not frustrated because it was repaired in approximately two months, which he argues is not a significant period considering the length of the tenancy. He further argued that ending the tenancy will pose a significant hardship for him, as he will be unable to find a similar rental unit in the same geographic area for the same monthly rent.

The Landlord contends that the tenancy is frustrated because the rental unit was rendered uninhabitable by the flood and that it remained uninhabitable for a period of approximately two months.

The Tenant is seeking compensation, in the amount of \$600.00 per month, for compensation for additional living expenses he incurred as a result of the flood. He is also seeking compensation, in the amount of \$200.00 per month, for “loss of security, quiet and mental anguish” that he experienced as a result of the flood.

The Tenant is also seeking compensation, in the amount of \$75.00, for utility costs he incurred at the rental unit after the tenancy ended on January 11, 2009. The Tenant submitted a BC Hydro bill, in the amount of \$99.20, in support of this claim. This bill represents the billing period between December 11, 2008 and February 11, 2009.

The Landlord acknowledged that a portion of the hydro bill was incurred during the repairs that occurred between January 11, 2009 and February 11, 2009. She stated that she unable to transfer the hydro service to her name because the Tenant had not cancelled his contract with BC Hydro. The Tenant acknowledged that he has not terminated his service with BC Hydro.

Analysis

Section 56.1 of the *Residential Tenancy Act (Act)* allows a landlord to make an application for dispute resolution requesting an order to end a tenancy and for an order of possession because the rental unit is uninhabitable or the tenancy agreement is otherwise frustrated.

I find that the Landlord and the Tenant had a month-to-month tenancy agreement that was frustrated on January 11, 2009, due to the fact that the subject rental unit was uninhabitable. In rendering my decision that the tenancy was frustrated, I relied on the following:

- The undisputed evidence that the rental unit was flooded as a result of a broken water main that belonged to the City of Victoria, which was an unforeseen event
- The lack of evidence that suggests that either the Landlord or the Tenant contributed to the flood or was in any way responsible for the flood
- The undisputed evidence that the flood caused significant damage to the rental unit
- The undisputed evidence that the repairs to the rental unit will take approximately two months to complete
- My conclusion that the Landlord made reasonable efforts to repair the rental unit in a timely manner
- The photographs that demonstrate the nature and the extent of the damage to the rental unit
- My conclusion that the rental unit was rendered uninhabitable by the flood for a period of approximately two months, which made it impossible for the parties to fulfill the terms of their agreement

- That there is no qualifying language in section 56.1 of the *Act*, such as the units are “currently” uninhabitable
- That the Landlord was unable to meet the terms and conditions of the tenancy agreement for approximately two months, which is a significant period of time in a month-to-month tenancy
- That this is a month-to-month tenancy, not a fixed term tenancy with specific terms that could be fulfilled if the tenancy were to continue.

As I have found that the tenancy agreement was frustrated on January 11, 2008, I hereby dismiss the Tenant’s application for an Order of Possession and I grant the Landlord an Order of Possession, pursuant to section 56.1(2) of the *Act*, that is effective two days after it is served upon the Tenant.

The Residential Tenancy Policy Guidelines explain what compensation generally follows after a finding that a contract has been frustrated:

“The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.”

The Landlord has returned pro-rated rent for the period between January 11, 2009 and January 31, 2009. The Landlord has also returned the security deposits paid by the Tenant, along with interest calculated to the day of the flood and I find this is all the compensation that is due to the Tenant. In reaching this conclusion, I specifically note that the Landlord has ended this tenancy in accordance with the *Act*, and that she is not responsible for costs incurred by the Tenant in relation to the end of the tenancy.

As the Tenant and the Landlord agree that the hydro expenses from January 11, 2009 and February 11, 2009 were incurred by the Landlord, I find that the Landlord should compensate the Tenant for the consumption during that period. I therefore find that the Landlord should pay the Tenant \$49.60 which represents half of the hydro bill for the period between December 11, 2009 and February 11, 2008.

As I have determined that this tenancy ended on January 11, 2009, I find that there is no need to consider the Tenant’s application for an Order requiring the Landlord to repair the rental unit.

Conclusion

The Landlord has been granted an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Tenant has established a monetary claim, in the amount of \$49.60, as compensation for the hydro consumption between January 11, 2009 and February 11, 2009. Based on these determinations I grant the Tenant a monetary Order for the balance of \$49.60. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I find that the Tenant's application has been largely without merit, and I therefore dismiss his application to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Date of Decision: March 05, 2009.
