



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with applications by the tenants for a monetary order. All parties were represented at the conference call hearing.

The parties had named two respondents in their applications, both N.P., the entity with which they had their tenancy agreement, and C.P., which the tenants testified they added because they read in the newspaper that C.P. owned the building. The landlord's agent testified that C.P. is a separate entity from N.P. I find insufficient evidence to show that C.P. exists as an entity or that it is properly named as a landlord. Accordingly I dismiss the claim as against C.P. and have amended the style of cause in this decision to reflect that change.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The following facts were not in dispute. The 4 rental units which are the subject of this claim were located in an apartment building which in the early hours of August 7, 2010, caught fire. The fire was started by a tenant on a lower floor who fell asleep while smoking. The tenants were evacuated on short notice and the building was rendered uninhabitable as a result of the fire. The landlord offered to house the tenants in other buildings owned by the landlord, but the tenants refused that offer. The tenants had all paid rent for the month of August.

The tenants stated that their belongings were either heavily water damaged or stolen during the period of time between the fire and the date on which they were allowed to access the units to salvage their belongings.

The tenants claimed that the landlord failed to provide fire extinguishers and theorized that had fire extinguishers been available, the fire could have been extinguished immediately, preventing its spread to the remainder of the building. The tenants further theorized that the smoke alarm was not functioning properly and that had the alarm been functioning properly, the sleeping tenant who caused the fire would have awoken earlier and extinguished the fire before it spread.

The landlord's agent testified that approximately 4 months before the fire, she inspected the building and at that time there were 3 fire extinguishers on each floor. The agent testified that the smoke alarms were working at the time of that inspection, but noted that occasionally tenants will disable the alarms in their units.

The tenants each claim a refund of rent from August 7 – 31 as they were unable to reside in the rental unit after the fire. Three of the four applicants also seek to recover the value of goods lost in the fire. All of the tenants seek to recover the filing fees paid to bring their applications.

Analysis

It is undisputed that as a result of the fire, the rental units were rendered uninhabitable. I find that when the fire occurred, the tenancies were frustrated. The fire could not have been anticipated and after it occurred, the landlord was unable to provide the rental units to the tenants. Although the landlord offered to transfer the tenancies to other units, the tenants were under no legal obligation to accept that offer.

When the doctrine of frustration operates to end a contract, the parties are entitled to be paid for any benefit already received, but are not entitled to further payment. I find that the landlord is entitled to retain the monies paid for August 1-6 and I find that the tenants are entitled to recover rent paid for the period from August 7 – 31 inclusive.

There was no dispute about the amount of rent payable each month by the tenants.

The tenants in unit 310, Y.D. and S.Y., paid \$790.00 in rent for the month of August. Applying a per diem rate of \$25.48, I award the tenants of unit 310 \$637.00.

The tenant in unit 301, D.C., paid \$890.00 in rent for the month of August. Applying a per diem rate of \$28.71, I award the tenant of unit 301 \$717.75.

The tenants in unit 205, L.H. and R.G., paid \$795.00 in rent for the month of August. Applying a per diem rate of \$25.65, I award the tenants of unit 205 \$641.25.

The tenant in unit 312, J.L., paid \$900.00 in rent for the month of August. Applying a per diem rate of \$29.03, I award the tenant of unit 312 \$725.75.

The landlord is not the tenants' insurer. In order to establish their claim for the loss of their goods, the tenants must prove on the balance of probabilities that the landlord caused the fire, either directly or through negligence. Although the cause of the fire was investigated, the tenants did not provide a report by the fire inspector showing that no fire extinguishers were available to the tenant who caused the fire or that the fire could have been contained had that tenant had access to an extinguisher. I find insufficient evidence to show that the smoke detectors were not working or to show that if they were not working, the tenant who started the fire did not disable his smoke detector.

I find that the tenants have failed to prove that the fire was a direct result of the landlords' actions or inaction and accordingly dismiss the claims for the loss of goods.

I find that the tenants are entitled to recover the \$50.00 filing fees paid to bring their applications and I award them \$50.00.

Conclusion

The tenants in unit 310, Y.D. and S.Y., are awarded \$687.00.

The tenant in unit 301, D.C., is awarded \$767.75.

The tenants in unit 205, L.H. and R.G., are awarded \$691.25.

The tenant in unit 312, J.L., is awarded \$775.75.

I grant the applicants monetary orders which may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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: March 08, 2011

Residential Tenancy Branch