



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. With the assistance of two others in attendance with her at the hearing, the tenant gave affirmed testimony. Despite being personally served on February 3, 2012 with the application for dispute resolution and notice of hearing, the landlord did not appear.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement for this month-to-month tenancy which began on June 22, 2011. The unit is located on the third floor of a 12 storey apartment building. The tenant shared the unit with 2 family members. Monthly rent of \$700.00 was payable in advance on the first day of each month. The tenant's one third share of rent was \$233.34, and the landlord issued separate receipts to each of the 3 tenants. While a security deposit was collected, it was not paid by this tenant and, accordingly, an application for return of the security deposit is not included in this particular application.

A fire broke out on the fifth floor of the building on November 3, 2011. In the result, all occupants of the building were evacuated and relocated to temporary alternate accommodation on that same day. Ultimately, the tenant moved into her current residence in early December 2011. As a result of having to vacate the unit under the above circumstances, the tenant seeks a reimbursement of rent for November 2011.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca
Section 44 of the Act speaks to **How a tenancy ends**, and provides in part:

44(1) A tenancy ends only if one or more of the following applies:

(e) the tenancy is frustrated;

Residential Tenancy Policy Guideline # 34 addresses "Frustration," and provides in part:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the tenancy contract was frustrated on November 3, 2011 and that, accordingly, the tenancy ended on that same date. In the result, I find that the tenant has established entitlement to reimbursement of a portion of rent paid for the month of November 2011. Specifically, I find that the tenant's entitlement is \$217.84, which is calculated below, and is based on the 28 day period from November 3 to 30, 2011.

$\$233.34$ (tenant's share of rent) \div 30 (# of days in November) = $\$7.78$ (daily rent)

$\$7.78$ (daily rent) \times 28 (# of days of entitlement) = $\$217.84$.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$217.84**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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: March 29, 2012.

Residential Tenancy Branch