



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant OPT, O
 Landlord MNR, FF, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking compensation for unpaid rent, for other considerations and to recover the filing fee for this proceeding.

The Tenants filed to obtain an Order of Possession and for other considerations.

Service of the hearing documents by the Landlord to the Tenants were done by registered mail on August 27, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlord were done by personal delivery on August 7, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. What other considerations are there?

Tenant:

1. Are the Tenants entitled to an Order of Possession?
2. What other considerations are there?

Background and Evidence

This tenancy started on October 1, 2008 with the male tenant and the tenancy agreement was adjusted on July 11, 2009 to include the female tenant. The tenancy is a month to month tenancy. Rent is \$1,136.00 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$525.00 on September 20, 2008.

During the start of the hearing the Landlord said all the tenants in the rental complex were moved out of their rental units on July 13, 2012, because of a fire in the building. The Tenants agreed that they vacated their rental unit on July 13, 2012 because of the fire in the rental complex. The Landlord continued to say that because of the fire, which resulted in structural damage to the rental complex, the fire department and the municipality declared the rental complex unsafe and the occupancy permit for the rental complex was withdrawn. The Landlord said the building was uninhabitable therefore the Landlord's company assisted the tenants in the building to find new accommodations in other buildings owned by the Landlord and in other rental units. The Landlord continued to say that on July 18, 2012 they delivered a Notice to all the Tenants that they had been advised by the regulatory authorities that the tenants would not be able to move back into the building at this time and that all tenancy agreements were immediately ended. The Landlord said at the hearing that the reasoning for ending all the tenancies in the rental complex was that the municipality and the fire department would not let the tenants return to the building because of damage to the structure of the building, which made the rental units unsafe, uninhabitable and therefore frustrated the tenancy agreements. The Landlord's Counsel said that under section 92 of the Act, frustrated contracts apply to tenancy agreements and under section 56 of the Act a tenancy may end as a result of a frustrated contract or tenancy agreement. The Landlord's Counsel said the municipality and the fire department said the rental units are uninhabitable and as a result of this the tenancy agreements are frustrated and the Tenants tenancy agreement ended July 13, 2012. The Landlord's Counsel continued to say that the Tenants claim for an Order of Possession and to reinstate the tenancy should not be successful as the end of the tenancy was beyond the control of the Landlord. The Landlord's Counsel said that if the Tenants application is successful and the tenancy is reinstated then the Landlord is claiming for rent for from July 13, 2012 to September 5, 2012 in the amount of \$2,021.58 and for the return of the security deposit of \$525.00 which the Landlord returned to the Tenant in July, 2012.

The Tenant said he agreed that their rental unit was uninhabitable and the other rental units in the complex were also uninhabitable, but he said the Landlord's actions to end his tenancy agreement because the contract was frustrated does not meet the tests required by the Frustrated Contracts Act or by previous court decisions on what constitutes a frustrated contract. The Tenant said his position is that his tenancy should

not be ended as the Landlord did not meet the test of a frustrated contract. The tenant continued to say that a frustrated contract must change the nature, meaning and purpose of the contract, the change must be permanent not temporary, it must have been unforeseen; it must not have been caused by one of the parties to meet an end and it must not result from negligent or omission. The Tenant said it is the Landlord's obligation to prove the tenancy agreement was frustrated on all these accounts. The Tenant continued to say that the repairs to the building are only a temporary change to the tenancy agreement as the repairs can be done in possibly 4 to 9 months, the Landlord and Tenant's rent payments are been continued from insurance claims; therefore the nature of the tenancy agreement has not changed and the Tenant said that he was told he must have fire insurance when he entered the tenancy; therefore a fire was not an unforeseen event. The Tenant quoted a number of court decisions to support his position. The Landlord's Counsel rebutted the court decisions that the Tenant quote as not applicable or that the Tenant misinterpreted the decisions. The DRO told the parties that this process is not bound by previous court decisions or presidents and that the decision would be based on the facts of this situation.

The Tenant closed his remarks by saying that the rental unit was uninhabitable at the time of the fire, but it was not a permanent condition and could be repaired in a short time; therefore the tenancy agreement is not frustrated and he should be allowed to move back to his home.

The Landlord's Counsel closed their remarks by saying the rental complex was uninhabitable and the decision to remove all the tenants was the decision of the municipality by revoking the occupancy permit and by the fire department by said the building was unsafe. The Landlord's Counsel said this tenancy is frustrated because the rental unit is uninhabitable and under section 56 of the Act a tenancy may end if the rental unit is uninhabitable or the tenancy agreement is frustrated. The Landlord's Counsel said this tenancy is frustrated because the rental unit is uninhabitable and therefore the tenancy ended July 13, 2012 the date of the fire.

The Landlord said they have a rough estimate that it will take a minimum of 40 weeks to reconstruct the building if it is feasible to do a reconstruction of the building.

The Landlord's Counsel also said they are seeking to recover the \$50.00 filing fee for this proceeding.

Analysis

Both the Tenant and the Landlord sent in a large amount of written evidence which I have reviewed. As well all parties had ample time to give affirmed testimony and both parties agreed they had covered all the points that they wanted to make. Although there was conflicting testimony on most points both parties agreed the central issue is whether or not the tenancy agreement was frustrated by the fire that occurred in the rental complex and the resulting condition of the building. The Landlord said the tenancy is frustrated because they were ordered to vacate the rental complex by the municipality and the municipality revoked the Landlord's occupancy permit. As well the Landlord and the Tenant both agreed that the rental complex and the Tenants' rental unit are uninhabitable.

The Tenants' position is that the Landlord can rebuild the rental complex in a reasonable time period therefore the change to the contract is not permanent and therefore the tenancy agreement is not frustrated. The Tenant believes his tenancy should be reinstated. I sympathise with the Tenants situation, but the Tenant was not provided any corroborating proof of the buildings condition or if the building can be repaired. The Landlord said the feasibility of repairing or rebuilding the rental complex has not been determined as of yet.

Further the fire was beyond the Landlord's control and the order to vacate the rental complex and not to allow further occupancy in the building in its present condition including the Tenants rental unit was made by the municipality and the fire department. This is clearly beyond the Landlord's control. Give the Landlord had no control or ability to continue to provide what was agreed to in the tenancy agreement to the Tenants and the other tenants in the rental complex, I find that the Landlord has established ground to proof the tenancy agreement is frustrated. As well, all parties agree the rental unit is uninhabitable and section 56(1)(a)(i) of the Act says a tenancy may be ended because the rental unit is uninhabitable; I further find the Landlord has established additional

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grounds to be successful in having the tenancy agreement deemed as frustrated. I find the tenancy agreement between the Tenants and Landlord dated October 1, 2008 and then adjusted on July 11, 2009 is frustrated and the tenancy is deemed to have ended on July 13, 2012 the date of the fire in the rental complex.

Consequently the Tenant's application for an Order of Possession is dismissed without leave to reapply.

Further the Landlord's application for unpaid rent is dismissed as the tenancy ended July 13, 2012 and both the Tenants and the Landlord agreed there is no unpaid rent prior to July 13, 2012.

As well I order that both parties bear the filing fee of \$50.00 each that they have already paid.

Conclusion

I find this tenancy ended on July 13, 2012 as the rental unit was uninhabitable and as a result the tenancy agreement was frustrated.

The Landlord's application for unpaid rent is dismissed without leave to reapply.

The Tenants' application for an Order of Possession 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 *Residential Tenancy Act*.

Residential Tenancy Branch