



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This was the hearing of an application by the tenants for a monetary order. The hearing was conducted by conference call. The named tenant, the landlord's representatives and counsel for the landlord called in and participated in the hearing.

Issue(s) to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

In their application for dispute resolution which was filed on October 22, 2012 the tenants claimed as follows:

On August 07, 2010, our building at (address of rental property) caught fire resulting in fire and water damage to personal belongings in suite #309. Building management and owners were grossly negligent, failed to provide a safe rental unit and engaged in illegal conversion of personal property resulting in our financial loss.

The rental property was rendered uninhabitable due to a fire in one of the rental units of the building in the early morning of August 7, 2010. The tenants were housed by the landlord in another of its properties, but only for two days. On or about August 8, 2010 the tenant Ms. R. P. Sent a letter to the landlord. It was stamped as received on August 12, 2010. The letter stated as follows:

I am the tenant of the suit (address of rental unit) I was transferred to (name of apartment) on Sunday August 8th 2010 due to the fire on (address) apartments Aug 7 2010 and do not wish to stay in the (name of apartment) anymore because I do not feel safe and I'm scared to live there. It's just my reason. And I would

like to get my damage deposit and the rest of the rent money back. My husband will also like to move with me (name of co-tenant)
Your help will be really appreciated.

The tenant acknowledged that he moved out with his wife on August 9, 2010. His security deposit was returned by cheque dated August 10, 2010. The rental property was never inhabited after August 7, 2012. The building was demolished in the fall of 2010.

The tenants filed an Notice of Claim in the Small Claims Court on July 9, 2012. The Small Claim proceeding is for substantially the same relief sought in this proceeding.

The landlord submitted that that the tenants' application for dispute resolution has been brought out of time because it was not filed within two years of the of the date that the tenancy ended, contrary to section 60 of the *Residential Tenancy Act*. The landlord submitted that the tenancy came to an end on August 7, 2010 when the rental property was destroyed by fire and the limitation period for bringing the tenants' claim expired on August 8, 2012.

The tenant submitted that the application for dispute resolution was not filed outside the two year limitation period. He referred to the tenancy agreement which provided that the tenancy shall commence on July 1, 2010 and end of the 31 day of January 2011. He contended that no notice to end tenancy was given to the tenants after the building was damaged the tenancy did not end until January 31, 2011. The tenant argued that the tenancy was not frustrated; he referred to the Residential Tenancy Policy guideline with respect to "Frustration" which contains the following remark: "A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission." The tenant referred to the notice given to the landlord by his wife and co-tenant; he submitted that it was not an effective notice ending the tenancy because it did not specify a date when the tenancy would end.

Analysis and conclusion

While there may be instances when a party may not assert that a contract has been frustrated when, by his own conduct he has made the contract impossible to perform. I do not find that argument persuasive or applicable to these circumstances. It is argued, but not shown that there was any negligence or want of care on the part of the landlord. The mere assertion that a party may have been negligent cannot be a basis for avoiding the doctrine of frustration. It is a settled principal of contract law that when the continued existence of a specific thing (such as an apartment) is essential to the

performance of the contract, the destruction of that thing must result in a finding that the contract has been frustrated.

I find that the tenancy ended on August 7, 2010 when the rental property was destroyed by fire and rendered uninhabitable. The tenants' application for dispute resolution was not filed within two years of the date that the tenancy ended. The claim under the *Residential Tenancy Act* therefore has ceased to exist and the tenants' application 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*.

Dated: January 22, 2013

Residential Tenancy Branch

