



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPT, MNDC, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession. The tenant also applied for an order of possession, for compensation and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession? Is the tenant entitled to an order of possession and to her monetary claim?

Background and Evidence

The tenancy started on April 01, 1987. The rent at the time the tenancy ended was \$1,130.00. Prior to moving in the tenant paid a security deposit of \$260.00.

On May 19, 2013, a fire broke out in the rental unit. The tenant stated that she was not home at the time and that it was a smouldering fire, there were no flames and the damage was minimal. The tenant was offered accommodation for three days after the fire, by Social Services.

The landlord hired a professional company to inspect the unit and assess the damage. In a report dated May 24, 2013 the engineer described the damage and concluded that the remedial and retrofit work will require that the unit be vacant for an approximate period of six to eight weeks. The report also stated that the unit was uninhabitable for the duration of the work.

The landlord notified the tenant that the unit was deemed uninhabitable by the Pro Active Hazmat and Construction Control Group and accordingly the tenancy was frustrated. The landlord offered the return of rent for the period of May 21 to May 31 along with the security deposit and applicable interest. During the hearing the landlord informed the tenant that a cheque in the amount of \$889.00 had been made out to the tenant.

The landlord stated that the tenant's belongings are still inside the rental unit and work can only start after these items are removed. The landlord has applied for an order of possession effective June 17, 2013, to enable the restoration work to get underway.

The tenant argued that the damage to the rental unit is minimal and does not warrant removal of her belongings. She stated that the bedroom was not damaged and her items could be stored there for the duration of the work. The tenant has applied for compensation in the amount of \$2,000.00 for hotel accommodation, stress, anxiety and invasion of her privacy caused by multiple visits to the rental unit by restoration workers.

The tenant's daughter testified that she is paying for the tenant's hotel accommodation and wants to be reimbursed for the same. Both the tenant and her daughter requested the landlord to provide alternate accommodation in the building complex for the duration of the work. The tenant has applied for an order of possession so that she may store her belongings inside the rental unit while the restoration work is in progress.

Analysis

Based on the sworn testimony and documentary evidence of both parties I find that the fire, rendered the unit uninhabitable. The cause of the fire that started in the middle of the living room is under investigation.

Residential Tenancy Policy Guideline #34 states a contract is frustrated where, without 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.

In this case the rental unit was rendered inhabitable by the fire thereby frustrating the tenancy agreement. The landlord acted in compliance when she offered the tenant the return of rent for the period that she had paid for and was unable to occupy the rental unit.

The landlord has filed evidence to confirm that the unit is uninhabitable and that all items must be removed in order for the restoration work to commence. Therefore, I find that the landlord has proven her case and is entitled to an order of possession.

The tenant has applied for compensation for the loss of quiet enjoyment. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

In this case, the landlord's actions did not cause the fire and therefore the tenant has not proven that there has been a breach of the covenant of quiet enjoyment. The landlord stated that the fire has caused considerable financial loss for the landlord but at this time the landlord is not pursuing damages against the tenant.

The tenant stated that her privacy was breached by the multiple visits from the restoration workers. Under the circumstances, I find that the landlord was acting within her rights to protect her property and was also acting in compliance with Section 32 of the *Residential Tenancy Act*. Section 32 states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Based on the above I find that the tenant is not entitled to compensation. Since the tenancy has ended the tenant's application for an order to direct the landlord to comply with the *Act* is moot and accordingly dismissed. The tenant has not proven her case and must bear the cost of filing this application.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 pm on June 17, 2013. The tenant's application is dismissed in its entirety.

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: June 07, 2013

Residential Tenancy Branch

