



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rishon Manor (H & J Investments)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD MNDC FF

For the tenant: CNR MNDC FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenant applied to cancel a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”), and a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recovery the filing fee.

The tenant, the father of the tenant, two agents for the landlord (the “agents”) and two witnesses for the landlord attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The landlord confirmed that they received the tenant’s evidence prior to the hearing and that they had the opportunity to review the tenant’s evidence. The tenant stated that he only received a portion of the landlord’s evidence prior to the hearing. As a result, the parties were informed that I would proceed with the hearing with the evidence that the tenant agreed to having received and reviewed, and if the landlord referred to evidence which supported the landlord’s claim that the tenant stated he did not receive, I would adjourn the hearing to allow for service of that specific evidence. During the hearing, the landlord did refer to evidence that the tenant indicated

heXXX did not receive in evidence, however, I determined that the evidence did not support the landlord's claim and as a result, I did not find it necessary to adjourn the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The tenant stated that he vacated the rental unit on October 1, 2013 as a result of the effects of the fire in the rental unit. As a result, the tenant requested to withdraw his application to cancel the 10 Day Notice and the landlord requested to withdraw their request for an order of possession as possession of the rental unit was returned as of October 1, 2013. I find that both requests do not prejudice either party. As a result, the parties were permitted to withdraw those portions of their applications.

The remaining portion of the tenant's application relates to a monetary claim of \$5,000.00, however, details of what the \$5,000.00 monetary claim was comprised of were not included in the tenant's application. As a result, the tenant was informed that his application for monetary compensation was being dismissed with leave to reapply, pursuant to section 59(5)(a) of the *Act* due to the tenant failing to provide sufficient particulars of his monetary claim for compensation in his application for dispute resolution as required by section 59(2)(b) of the *Act*. The tenant is at liberty to re-apply for his monetary claim as a result, but is reminded to include full particulars of his monetary claim when submitting his application for dispute resolution, and is encouraged to use the "Monetary Worksheet" form located on the Residential Tenancy Branch website; www.rto.gov.bc.ca.

As a result of the above, the hearing proceeded with consideration of the landlord's application only, with the exception of the landlord's request for an order of possession as indicated above.

During the hearing, an agent for the landlord, MV, requested to reduce the landlord's monetary claim from the original amount claimed of \$1,960.00 which included loss of November 2013 rent to \$1,260.00 which did not include loss of November 2013 rent. As a reduction in the landlord's claim does not prejudice the tenant, the landlord agents were permitted to reduce their monetary claim to \$1,260.00.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on September 15, 2012 and was to revert to a month to month agreement as of September 30, 2013. Monthly rent in the amount of \$700.00 was due on the first day of each month. A security deposit of \$350.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The parties agreed that a fire occurred in the rental unit building on August 29, 2013. Both parties confirmed that they were not alleging that either party was the direct cause of the fire in the rental unit building. The parties disagreed that the rental unit was suitable for occupation after the fire.

The tenant stated that he was unable to reside in the rental unit after the fire occurred due to ceiling damage caused by the fire department, smoke damage, and the smell of smoke in the rental unit that existed until the tenant officially vacated the rental unit on October 1, 2013. The tenant stated that he did not live in the rental unit, however, since the fire started on August 29, 2013. The tenant provided 40 photos in evidence to support that a fire took place in the rental unit building and that there was damage to the rental unit.

Agent MV, stated that the tenant was occupying the rental unit after the fire occurred as the tenant prevented the restoration company from completing their work in the rental unit, which the tenant disputed. The landlord's agents were asked if they had submitted any documentary evidence to support that the rental unit was suitable for occupation ("habitable"). Agent MV responded by stating "yes" and referred to a September 26, 2013 document from the restoration company. In part the document reads:

"...On two occasions both myself and [name of site foreman]...had discussions with the tenants father explaining the process of fire clean ups and why it wasn't safe for his son to be living in the current conditions of the suite..."

[Reproduced as written]

The agents were asked again if they had submitted any documentary evidence to support that the rental unit was habitable, and agent MV then responded “no”.

The landlord is seeking reduced September 2013 rent of \$560.00 after deducting the days that tenants were not permitted to live in the rental unit building, and \$700.00 for loss of October 2013 rent.

Analysis

Based on the oral testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

I find that the landlord’s agent’s testimony contradicts the documentary evidence submitted in evidence by the landlord regarding whether the rental unit was habitable after the fire on August 29, 2013. The agent stated that the restoration company advised that the rental unit was suitable for occupation, however, the documentary evidence does not indicate such. Furthermore, the documentary evidence supports that the rental unit was “wasn’t safe for [the tenant] to be living in” as of September 26, 2013, the date of the letter submitted in evidence. In addition, the landlord’s agent MV confirmed during the hearing that the landlord did not submit any documentary evidence that supports that the rental unit was suitable for occupation after the fire on August 29, 2013. Based on the above, I prefer the evidence of the tenant that the rental unit was not suitable for occupation after the fire on August 29, 2013 which the tenant did not contradict during the hearing.

Section 44 of the Act provides that a tenancy will end, among other things, when a tenancy is frustrated. Residential Tenancy Branch Policy Guideline 34 provides that a contract is frustrated when it becomes incapable of being performed, through no fault of the other party.

Given the above, I find the tenancy agreement became frustrated on August, 29, 2013 when a fire broke out in the residential property. Based on the above, **I dismiss** the landlord’s monetary claim without leave to reapply as I find the tenancy became frustrated and ended on the date of the fire, August 29, 2013.

As the landlord was not successful with their application, I do not grant the landlord the recovery of their filing fee.

I ORDER the landlord to immediately return the tenant’s full security deposit of \$350.00.

I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$350.00 which the tenant may enforce in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with my Order.

Conclusion

As described above, the tenancy became frustrated on August 29, 2013, the date of the fire in the rental unit building and the tenancy ended on that date as a result.

The landlord's application is dismissed without leave to reapply.

The landlord has been ordered to immediately return the tenant's full security deposit of \$350.00. I grant the tenant a monetary order pursuant to section 67 of the *Act*, in the amount of \$350.00 which the tenant may enforce in the Provincial Court of British Columbia (Small Claims) should the landlord fail to comply with my Order.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 21, 2013

Residential Tenancy Branch

