



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RPP, OPT, MNDC

Introduction

This hearing dealt with an application by the tenant for orders requiring the landlord to make certain repairs and to retain person property; granting the tenant an order of possession; and granting the tenant a monetary order. Both parties appeared and had an opportunity to be heard.

At the beginning of the hearing the tenant withdrew her applications for a repair order and an order of possession.

Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced January 27, 2004. Although the parties have signed fixed term tenancy agreements in the past at the time of the dispute it was a month-to-month tenancy. Over the years the monthly rent, which is due on the first day of the month, had risen from \$950.00 to \$1100.00. The tenant paid a security deposit of \$475.00 at the start of the tenancy.

The rental unit is a three bedroom unit located in a four-plex. The tenant lives there with her husband and two adult children. Her son is mentally challenged.

On September 8, 2014, while the tenant's husband was out of the country, there was a fire in the rental unit. The tenant had a pot with oil heating on the stove. The tenant went to the bathroom, leaving the pot unattended. She said she left the timer on to alert her when the pan was hot enough. She came out of the bathroom before the timer went off and discovered that the pan and the stove were on fire.

The tenant had to go through the kitchen to get out of the unit. In the course of making her exit she suffered significant burns to her face, neck, right hand and forearm, and left armpit.

The fire department and the ambulance were called. The tenant was at the hospital for a few hours that day before she was discharged. She went back to the hospital the next day for additional treatment. Since then she has been taking heavy drugs for pain. The tenant testified that in the first few days after the fire she was in so much pain and taking so many drugs to cope with the pain that she was not really aware of what was going on.

There were no smoke detectors in the rental unit and the tenant did not carry tenant's insurance.

The landlord and the tenant's daughter spoke several times over the next few days. Neither the landlord nor the daughter appeared at the hearing or provided any direct evidence. An agent, who had been retained by the landlord after he was served with the tenant's application for dispute resolution, filed a written statement and gave oral testimony in which he relayed information provided by the landlord.

The tenant says the landlord spoke to her the day after the fire but she was in no condition to talk so eventually the landlord spoke to her daughter. The tenant said the landlord made all the arrangements for the moving company and told them the movers would do all the packing. She was agreeable to this arrangement. Her understanding was that they would only be moving out temporarily while the unit was being repaired.

The tenant testified that she asked the movers to come a day later than originally scheduled because she had a doctor's appointment that day.

The tenant testified that the movers came on September 10. They did not move everything out. Her intention was just to clear enough room to make it easier for the contractor.

The tenant testified that on the 9th or 10th the landlord spoke to her daughter and offered to pay them half of the September rent, the security deposit and moving expenses.

After the container was packed the movers presented them with a bill for \$1300.00, which was for moving and for one month storage. Her daughter said the landlord should pay these costs. The daughter and the landlord spoke again on the 11th or 12th

and the landlord increased his offer. The offer was contingent on the tenants signing a release. No agreement was reached.

On September 10 or 11 her daughter received a message from the landlord telling her to get everything out of the unit. On the evening of September 11 her daughter discovered that the locks on the rental unit had been changed. They were not able to enter the unit or obtain the return of items left inside.

The landlord's agent testified that the fire captain told the landlord orally that the unit was uninhabitable because of the toxic ingredients released in the fire. A written order was never issued by the fire department.

The landlord called a moving company for an estimate for a three bedroom suite and was told about \$400.00.

The agent says the landlord went to the rental unit and spoke to the tenant. He did not know if the landlord also spoke to the tenant's daughter. He told the tenant he had an order from the fire captain and the restoration company that the unit had to be vacated. He told the tenant to make the arrangements for the movers.

The agent's information was that the tenants made all the arrangement with the movers directly. His understanding was that there was an additional fee of \$300.00 charged because of the last minute cancellation.

On September 11 the landlord contacted the tenant by telephone and her daughter by text asking them to remove the last few items from the rental unit.

On September 12 a junk removal company came to the unit and packed up some items. The landlord did not make these arrangements.

On September 15 the landlord saw there were two boxes left at the rental unit and had them hauled away by a junk removal company. It was after this that the locks were changed. The agent thought the restoration company changed the locks. He says that the landlord did not change them.

The tenant's testimony was that several large pieces of furniture were left in the rental unit including an upright freezer; a mattress; two large storage cabinets; two dining sets, one with four chairs and one with eight; a coffee table; and two side tables. She gave estimates of the purchase price and age for each of these items. In total she claimed \$3000.00 for furniture.

She testified that her daughter paid the movers \$2000.00 for moving and two months storage. She claims \$1300.00 for the cost of moving. A copy of the invoice was not filed in evidence.

In her rebuttal evidence the tenant testified that she did not know if her daughter arranged to have some items hauled away. She also stated that her daughter made all the arrangements.

The tenant also claimed for loss of income experienced as a result of the fire. She works as a chef at a hospital where she earns \$19.00 per hour. She says she usually nets \$2100.00 to \$2200.00 per month. Four weeks after the fire she started receiving E.I. benefits in the amount of \$1600.00 per month. She is off work until January 7, 2015 for sure. Her situation will be re-evaluated at that time. In total she claims \$2500.00 for loss of income.

The tenant stated that because of her employment she is familiar with the risks associated with oil fires.

The tenant filed this application for dispute resolution on September 19.

The tenant testified that after the application for dispute resolution was served on the landlord there were further settlement discussions with the landlord but they did not come to any agreement. The landlord's agent said he has not been a part of these discussions.

As of the date of the hearing the repairs to the unit had not been completed.

The tenant has not provided the landlord with a forwarding address in writing and the landlord has not made a claim against the security deposit.

Analysis

The primary problem with this case is the quality of the evidence submitted. Neither of the two individuals who had the most direct involvement with events after the fire provided any direct evidence. The tenant's own evidence is that because pain and painkillers she was not really aware of all the events around her. As a result her recollection of events immediately after the fire is not as reliable as the recollection of someone who was not suffering the way she was. She also testified that her daughter made all the arrangements, but her daughter did not testify or provide any form of written evidence. The landlord did not provide any direct evidence either. His evidence

was provided, in writing and orally, through an agent who was only able to repeat what the landlord told him.

Other than the two tenancy agreements, the tenant's demand letter to the landlord dated September 17, and the written submission from the landlord's agent, no documentary evidence such as copies of the mover's invoice, pay slips, income tax returns, fire report, photographs, etc. were filed by either party in support of their claims or statements.

In the end, the only evidence before me is the hearsay evidence submitted by both sides.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

The landlord is only responsible for any of the tenant's claims if the fire and the resulting damages were a result of a deficiency in the rental unit.

The first act of negligence was the tenant leaving a pot of oil on a hot stove unattended. Even if the unit had been equipped with a smoke detector it would only have warned the tenant that the pot was smoking. The tenant's argument is really that if she had heard a smoke alarm she could have removed the pot from the heat source before it burst into flames. However, there is no evidence before me as to how much time usually elapses between when hot oil starts smoking and when it bursts into flames. If the time is only a few seconds the questions of whether there was a working smoke detector in the unit is irrelevant as the tenant's evidence was that she had to pass the stove to get from the bathroom to the exit. There is no evidence before me on which I can conclude, on a balance of probabilities, that the fire and the resulting damage would have been prevented or minimized if there had been a working smoke detector in the unit.

As a result of the tenant's failure to establish that the landlord's negligence was the cause of the fire and the resultant moving expenses and loss of income, together with her failure to provide any documentary evidence in support of these claims, the tenant's claim for moving expenses and loss of income is dismissed.

The tenant's claim for return of the September rent is based upon the doctrine of frustration, which is explained in *Residential Tenancy Policy Guideline 34: Frustration*. It explains that 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. 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. I have found that the tenant's negligence did contribute to the fire, accordingly, the tenant's claim for return of the September rent must be dismissed.

The tenant's claim for loss of furniture must be dismissed. The only evidence before me about the quantity and nature of the items left in the rental unit is the contradictory hearsay evidence provided by the parties. The tenant testified that she did not know if her daughter asked to pick up the remaining items and was refused, or if her daughter made any arrangements to have anything picked up by a junk removal company. She also testified that her daughter did all the packing. There is no evidence before me that tips the balance of probabilities in the tenant's favour.

Conclusion

For the reasons set out above the tenant's claim is dismissed.

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: December 09, 2014

Residential Tenancy Branch

