



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to surrender possession of the rental unit. Both parties participated at the conference call hearing.

The tenant claimed a total of \$48,456.40. At the hearing, I advised the tenant that the Residential Tenancy Branch's monetary jurisdiction was limited to \$25,000.00. The tenant agreed to abandon that part of her claim which exceeded the jurisdictional limit.

Issue to be Decided

Was the tenancy frustrated?

Background and Evidence

The facts were not in dispute. The rental unit is located on the bottom floor of a multi-floor apartment building. On July 22, 2014, a nearby city water main burst and flooded the rental unit, causing water of up to one foot in depth to collect in the unit, rendering the unit unliveable. The tenant vacated the unit and the landlord returned to her the security deposit and the balance of rent for the month of July.

The tenant claims that she was illegally evicted and claims costs associated with her move and other losses resulting from her move. The landlord took the position that the tenancy was frustrated. The landlord testified that as of the date of the hearing, repairs had not been completed and there was not yet a date estimated by which those repairs would be completed.

Analysis

The parties agreed that the flooding in the rental unit was not caused by either the landlord or the tenant. In order for the tenant to succeed in her claim, she must prove that she was illegally evicted. As the parties agreed that the rental unit was rendered uninhabitable by the flood, I find that the tenancy was frustrated at the time the unit flooded. This was not a simple issue which could be repaired within a short time frame. Rather, it prevented the contract from being carried out because the rental unit could not be occupied, either by the tenant or her belongings, which was the very essence of the contract.

Because I have found that the tenancy was frustrated, the tenancy agreement and the obligations of the parties under that agreement ended at the time of frustration. The landlord therefore had no obligation to give the tenant any notice that her tenancy was ending and bore no responsibility for the tenant's financial losses. I therefore dismiss the tenant's monetary claim.

Although the rental unit is still unoccupied, I decline to order the landlord to surrender possession of the unit. Because the agreement was frustrated, there is no ongoing tenancy agreement and the landlord is therefore under no obligation to grant the tenant possession of the unit when it has been restored. The claim for an order of possession is dismissed.

Conclusion

The tenant's claim 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: December 18, 2014

Residential Tenancy Branch

