



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This matter dealt with an application by the Tenants to determine if the tenancy agreement they had with the Landlord can be cancelled due to a provision for a frustrated contract.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by person delivery and registered mail on May 28, 2015. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the tenancy agreement cancelled due to frustration of the contract?

Background and Evidence

This tenancy started on October 1, 2012 as a month to month tenancy. Rent was \$462.00 per month payable in advance of the 1st day of each month. The Tenant paid a security and pet deposit of \$475.00 at the start of the tenancy.

The Landlord said a fire happened at the rental unit on April 3, 2015 and as a result of that fire they have written the Tenants on April 9, 2015 and April 15, 2015 that the tenancy has ended due to a frustrated contract/tenancy agreement. The Landlord said the tenancy agreement is frustrated because they do not have a rental unit to rent to the Tenants. Further the Landlord said the fire started in the tenants' vehicle, therefore the Landlord was not responsible for the fire and consequently is not responsible for the tenancy agreement/contract being frustrated. The Landlord said this situation is the text book example of a frustrated tenancy agreement/contract as the Landlord is unable to meet their contractual obligations through no fault of their own. The Landlord continued to say the fire department ordered that the site be secured by a fence and no one was allowed entry until building and safety inspections were completed and the rental unit was cleared for occupancy again. The Landlord said it has been 4 months now and the unit may not be rentable for up to a year from now. The Landlord said the unit is basically in the framing stage at this point.

Further the Landlord said they returned the Tenants' security deposit and the Tenants' rent for April, 2015 on April 9, 2015 as indicated in the by the Residential Tenancy Branch. The

Landlord said this is a regrettable situation but they believe the tenancy ended due to the fire which frustrated the tenancy agreement /contract.

The Tenants said they believe the tenancy agreement should not be frustrated due to the fire because the unit can be repaired and they are willing to wait for the unit to be rentable again. The Tenants' Advocate said that the time of repairs should play a part on whether a tenancy is frustrated or not. If the Tenants are willing to wait for the repairs then the tenancy may not be frustrated. The Tenants said they were told the repairs may take only 3 to 4 months and therefore this should not frustrate the tenancy agreement/contract. The Landlord said the unit is not being repaired it is being rebuilt and this could take up to a year or more.

The Tenants continued to say that a year ago there was a flood in the unit and repairs took about 2 months. This did not frustrate the tenancy agreement/contract so why should the fire frustrate the tenancy agreement /contract. The Landlord said during the flood the unit could have been lived in because the unit still had services. After the fire the unit had no electricity, no gas and there was an order by the fire department to secure the site and not to allow any entry until inspected for safety. The Landlord said the fire is a very different situation than the flood incident.

In closing the Tenant's Advocate said the Tenants want to continue the tenancy and she believes the fire may have interrupted the tenancy but does not frustrate the tenancy agreement/contract. The Tenants' Advocate requested an Order of Possession of the rental unit for the Tenants.

The Tenants said in closing that there are very few wheel chair accessible rental units available so they requested the Landlord to rent the unit to them when the unit is complete and ready to rent again.

The Landlord said they are not considering the rental of the unit at this time so he cannot answer any question about the rental until the unit is completed and available. Further the Landlord said this is the first situation the Landlord has dealt with as a frustrated tenancy agreement/contract and he believes it fits the definition of a frustrated contract. As well the Landlord said they followed the process and were up front with the Tenants so there was no confusion about what was happening. The Landlord said they returned the April, 2015 rent and the security deposit to the Tenants on April 9, 2015, once they determined the tenancy agreement was frustrated. The Landlord said he believes this tenancy has ended due to the fire which frustrated the tenancy agreement/contract.

Analysis

The Tenants application is a request for the Residential Tenancy Branch to rule on whether this tenancy agreement is frustrated by the fire that happened in the rental unit on April 3, 2015. The Tenant said they are willing to wait for the rental unit to be repaired and want to continue the tenancy. The Landlord said they are unable to meet their obligations under the tenancy agreement/contract at no fault of their own therefore this is the definition of a frustrated tenancy agreement/contract. The Landlord said there is no rental unit to rent and they do not know when the unit will be completed and available to rent. Therefore they believe the tenancy agreement/contract is void due to frustration of the contract.

Policy guideline # 34 says 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.

In this situation the fire has destroyed the rental unit therefore the Landlord is unable to provide his obligations under the tenancy agreement/contract. The Landlord had no fault regarding the fire; therefore the Landlord is not responsible for the fire and is now incapable of providing the rental unit because it is not habitable and may not be habitable for some time. Guideline #34 makes no reference to time; therefore the Tenants argument that they are willing to wait for the unit to be rebuilt does not impact whether the tenancy agreement/contract is frustrated or not. Frustration of a contract is based on performance of the parties to meet their obligation under a contract. When a party cannot meet their obligations under a contract through no fault of their own the contract is frustrated and the party is discharge of their obligations.

I find in this situation the Landlord is unable to meet their obligations under the tenancy agreement/contract because of the fire and the Landlord has no fault in the situation. I find this tenancy agreement/contract has been frustrated by the fire of April 3, 2015. Therefore I find the Tenants have not established grounds to dispute the Landlord ending the tenancy for the reason of frustration.

The Tenants' application is dismissed without leave to reapply.

Conclusion

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: July 13, 2015

Residential Tenancy Branch

