



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on July 18, 2016 (the "Application"). The Tenant applied for a monetary order for money owed or compensation for damage or loss, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the hearing on his own behalf and provided affirmed testimony. He was assisted by an advocate, E.R. The Landlord did not attend the hearing.

The Tenant testified his Application package was served on the Landlord by registered mail on July 19, 2016. In support, the Tenant provided copies of Canada Post registered mail receipts and delivery information. The delivery information confirms the package was accepted by the Landlord on August 2, 2016. I find the Landlord was served with the Tenant's Application package on that date.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Tenant provided oral testimony and documentary evidence regarding the tenancy. He confirmed that he moved into a unit in the former hotel on or about December 1, 2013. The Tenant, who receives social assistance, confirmed rent in the amount of \$750.00 was due each month. The Tenant also testified a security deposit of \$375.00 was paid at the beginning of the tenancy.

The Tenant testified that a fire broke out in the building on March 21, 2016, and that he has been unable to return. A newspaper article provided by the Tenant stated:

Thirteen of 85 suites were destroyed while others were damaged by smoke and water...the building is not safe to occupy.

[Reproduced as written.]

The Tenant confirmed that rent was paid for the month of March 2016. In support, he provided with his documentary evidence a cheque history statement confirming rent was paid to a numbered company. The numbered company was the registered owner of the property indicated on a Ministry of Social Development Shelter Information form, also provided in evidence by the Tenant.

The Tenant submitted that the fire frustrated the tenancy agreement, and asked for an order that the Landlord return rent for the period from March 22-31, 2016 (10 days) on a pro-rated basis. The total amount claimed by the Tenant was \$241.94.

Analysis

Based on the unchallenged documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Residential Tenancy Branch Policy Guideline #34 provides guidance when determining whether or not a contract has been frustrated. It states:

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.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. 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.

The Frustrated Contract Act deals with the results of a frustrated contract. For example...if the tenancy were frustrated by a flood on the 15th day of the month, under the Frustrated Contract Act, the landlord would be entitled to retain the rent up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.

[Reproduced as written.]

In this case, I have no difficulty finding the tenancy agreement was frustrated by the fire on March 21, 2016. The fire altered the nature, meaning, purpose, effect and consequences of the contract. Indeed, the Tenant was unable to return to live in the rental unit. Fulfillment of the tenancy agreement as originally intended was impossible.

In light of the above, and pursuant to section 67 of the Act, I grant the Tenant a monetary order in the amount of \$241.94.

Conclusion

The Tenant is granted a monetary order in the amount of \$241.94. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 18, 2017

Residential Tenancy Branch