



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order determining the tenancy to be frustrated pursuant to section 56.1 of the *Act*

The tenant and landlords attended the hearing and were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Issue to be Decided

- Are the landlords entitled to an Order of Possession because the tenancy is frustrated?

Background and Evidence

The landlords explained that the tenancy had been frustrated and they required the tenant to immediately vacate the rental unit. A letter dated May 1, 2017 was submitted to the hearing as part of the landlords' evidentiary package. This letter explained to the tenant that he needed to "find a new place to live effective immediately".

During the course of the hearing, the landlords contended that they required immediate access to the apartment so that repairs due to a flood could be made. They sought to have a determination that their tenancy agreement was frustrated.

The tenant testified that the amount of water in question was "4 or 5 gallons" that he himself had cleaned up. He stated that the unit continued to be habitable and he had no issues with any damage. The tenant disputed that the tenancy was frustrated. His

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description of the property was not consistent with a circumstance where the nature, purpose, or effect of the tenancy could be found to be frustrated.

Analysis

A tenancy can only be ended pursuant to the *Act*. Section 44 describes the various ways that a tenancy can be ended, noting;

44 A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

Residential Policy Guideline #34 discusses the issue of frustration. It explains, "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 for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms." In this case, steps may be taken by the landlord to continue to fulfill their residential tenancy agreement, which is to be viewed as their "contract."

The tenant has not been served with a notice to end tenancy. No mutual agreement to end tenancy has been signed by the parties. A landlord cannot determine themselves that a tenancy is frustrated and order the tenant to immediately leave the rental unit as has occurred in this case. Although I have given the landlords' request careful consideration and reviewed the evidentiary package submitted to the hearing, I find that the circumstances presented by the parties with respect to this tenancy does not constitute a frustrated contract as described in Residential Policy Guideline #34. I find that this tenancy shall continue.

Conclusion

The landlords' application for a frustrated tenancy is dismissed. This tenancy continues until ended in accordance with the *Act*.

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: May 23, 2017

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