



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for an Order of Possession for the rental unit.

The Tenant stated that on August 15, 2017 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted with the Application were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On August 24, 2017 the Landlord submitted 33 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant on August 24, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On September 06, 2017 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant sometime prior to September 06, 2017. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Issue(s) to be Decided:

Is the Tenant entitled to an Order of Possession?

Background and Evidence:

The Agent for the Landlord and the Tenant agree that the Tenant moved into the rental unit on January 11, 2016.

The Agent for the Landlord stated that there was a fire in the residential complex on April 12, 2017. The Tenant stated that there was a fire in the residential complex on April 13, 2017.

The Agent for the Landlord stated that the municipality and the fire department have determined this rental unit, and other rental units in the residential complex, to be uninhabitable. She stated that at this time there are no plans to repair the residential complex that was damaged by the fire and she does not know if the area will be repaired in the near future.

The Tenant submitted no evidence to dispute that the rental unit is currently uninhabitable.

Analysis:

As outlined in Residential Tenancy Branch Policy Guideline #34, 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.

On the basis of the undisputed evidence that this rental unit has been declared uninhabitable by local authorities, I find that this tenancy agreement was frustrated as a result of a fire in the residential complex in April of 2017. I therefore find that the

tenancy ended on the date of the fire, pursuant to section 44(1)(e) of the *Residential Tenancy Act (Act)*.

As the tenancy ended as a result of the fire and is not currently habitable, I dismiss the Tenant's application for an Order of Possession.

Conclusion:

The Application for Dispute Resolution 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: September 19, 2017

Residential Tenancy Branch