



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT MNDCT MNRT FFL MNDCL MNDL MNRL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- a monetary order for compensation for unpaid rent, for money owed, and for damage to the unit, site, or property under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- a monetary order for compensation for emergency repairs, money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing packages (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with the Applications and evidence.

Issues(s) to be Decided

Are the parties entitled to the monetary orders that they have applied for?

Are the parties entitled to recover their filing fees for their applications?

Background and Evidence

This fixed-term tenancy began on August 1, 2016, with monthly rent set at \$1,500.00. The landlord had collected a security deposit of \$750.00 from the tenants, which was returned to the tenants during the tenancy. The tenants testified that they moved out on July 31, 2017, the date they had returned the keys to the landlord's possession. The landlord testified this tenancy ended on August 2, 2017. Both parties confirmed that only a move-out inspection was completed by the landlord.

Both parties confirmed the following undisputed facts. In May of 2017 the home was flooded due to natural causes, which affected an entire geographic area. The flooding was quite serious in nature, and affected many homes including this one. Both parties confirmed that rent for the months of June and July 2017 was not paid by the tenants, and that the landlord had given a rent reduction of one month's rent for the end of the tenancy.

The landlord is seeking the following monetary compensation in the amount of \$4,296.50 related to this tenancy, and submitted photos and documents in support of her claim.

| Item | Amount |
|---|-------------------|
| Damage to cupboards, walls, bathtub, floors & cleaning/painting | \$2,000.00 |
| Unpaid Utilities | 796.50 |
| Unpaid Rent for June & July 2017(reduced by 50%) | 1,500.00 |
| Total Monetary Order Requested | \$4,296.50 |

The tenants testified that they had paid the landlord \$449.37 towards the outstanding utilities, which the landlord disputes.

The tenants are requesting monetary compensation in the amount of \$8,139.05.

| Item | Amount |
|--|---------------|
| Emergency Repairs performed by tenants | \$7,499.69 |
| Pest Control | 126.00 |

| | |
|---|-------------------|
| Dehumidifier | 213.36 |
| Rent Reduction for dishwasher (\$25/month) | 300.00 |
| Total Monetary Order Requested | \$8,139.05 |

The tenants testified that they had assisted the landlord in mitigating the damage to the home, and in their evidence have attached an invoice for the cost of the emergency repairs and services they provided to the landlord. The tenants own a business, and billed the landlord for their services. The tenants testified that they had communicated to the landlord by text message that the 2 pumps were failing, and that the water was coming into the home quickly. On May 17, 2017 the pumps failed, and on May 18, 2017 the tenants installed a third pump. The tenants testified that they utilized the pumps, a shop vac, as well as sandbags to save the furnace and hot water tank. The tenants testified that they had sand bagged for 20 hours. The tenants testified that they were under the impression that the landlord would reimburse them as the landlord was not in town. The tenants testified that due to the flood they lost use of the basement as of May 19, 2017, and in June both tenants had to find alternative accommodation as a large portion of the home was uninhabitable due to the flood damage.

The landlord responded that she had agreed to reimburse the tenants \$1,425.00 for the sump pump upon the production of a receipt, but the tenants have failed to do so. The landlord also testified that she had agreed to pay the tenants for 100 hours of work at minimum wage, but not at \$25.00 per hour. The landlord is disputing the claim for reimbursement of the pest control and rent reduction for the dishwasher. The landlord testified that they were never previously given any invoices for the pest control until the tenants filed their application for dispute resolution.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.” The tenant applied for reimbursement of the cost of oil that was not used during this tenancy.

Residential Tenancy Policy Guideline 34 states the following about a Frustrated Tenancy:

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, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord would be entitled to retain the rent paid 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.

In consideration of the evidence and testimony before me, I find that this tenancy became frustrated on June 1, 2017 when the tenants could no longer inhabit the home due to the flood. It was undisputed by both parties that the nearby lake had flooded many nearby homes as well, and this was a situation that could not be foreseen by both parties, nor was it a result of the negligent or deliberate act of either party. I find that the flooding and resulting mould and damage prevented the landlord from fulfilling her

obligations under this contract, and therefore the tenancy ended on June 1, 2017, even though the tenants officially moved out and returned the keys at a later date.

On that basis I find that the tenants not obligated to pay rent due to the frustrated contract as of June 1, 2017. As the tenants did not pay any monthly rent from that period onwards, I am dismissing the landlord's monetary claim for unpaid rent for June and July 2017 without leave to reapply.

The landlord submitted a monetary claim of \$2,000.00 for damage as well as cleaning at the end of the tenancy. Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. I have reviewed the evidence submitted by the landlord in support of this claim. I find that due to the circumstances surrounded the flood and frustrated tenancy, the tenants were unable to fulfil their obligations under the *Act*. I find that the situation escalated quickly, and the tenants had tried to vacate the home and leave it in as reasonably clean and undamaged condition as they could considering the circumstances. I find that the condition of the home was affected by the flood, and I find that the landlord did not provide sufficient evidence to show that the tenants had deliberately contravened the *Act*. Accordingly I am not satisfied that the landlord had suffered a monetary loss of \$2,000.00 due to a deliberate disregard for their obligations under the *Act* or tenancy agreement, and I dismiss this portion of the landlord's claim without leave to reapply.

The landlord also applied for a monetary claim for unpaid utilities, which the tenants testified that they had paid a portion of. In consideration of the evidence before me, I find that the tenants are responsible for the outstanding utilities claimed, and I allow the landlord a monetary order for the full \$796.50 claimed.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system...
- (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, the flooding of the basement may be considered emergency repairs. Sections 33(5)(b) and 33(6)(b) require the tenants to provide a written account of the emergency repairs accompanied by a receipt for the amount claimed.

I have considered the sworn testimony of both parties as well as the documentation provided for this hearing. Although the tenants referenced an agreement of the landlord to reimburse them for the repairs and services, I find that the tenants did not provide a copy of this agreement in writing. Furthermore I accept the landlord's testimony that she was never formally provided with any detailed receipts for the purchase of a pump. On this basis, I find that the tenants did not provide sufficient evidence to support their claim under section 33(1) for Emergency Repairs, and I dismiss this portion of the tenants' claim without leave to reapply. I am, however, satisfied that the tenants suffered a monetary loss which the landlord testified that she would reimburse the tenants a portion of. Despite the absence of formal documentation, I find that the landlord did agree to reimburse the tenants for their services, and I find that the tenants' actions were due to their attempt to mitigate the landlord's exposure to losses. As the tenants did not provide any detailed documentation to support the terms of the agreement, I find that the tenants are entitled to be reimbursed for the portions of their claim that the landlord acknowledged: \$1,135.00 for the repairs (100 hours * \$11.35), and \$1,425.00 for the new pump. As there is not documentation to support that the landlord had agreed to the purchase of a dehumidifier, this portion of the tenants' claim is dismissed without leave to reapply.

I find that the tenants failed to provide sufficient evidence to support that the cost of the pest control was due to the landlord's failure to comply with the *Act*. I am not satisfied that the landlord was advised in writing about the issue, or that the landlord was given an opportunity to address or respond to with the issue. On this basis, I dismiss the tenant's monetary claim for the pest control. Similarly the landlord indicated that they had responded to the tenant's request for repairs to the dishwasher. I am not satisfied that the landlord had failed in her obligations to address the matter, and accordingly I dismiss the tenants' application for a refund of the rent paid.

As both parties' application had some merit and due to the offsetting award of the filing fee, no order will be made in regards to the recovery of the filing fees.

Conclusion

I issue a Monetary Order in the amount of \$1,764.00 in the tenants' favour as set out in the table below:

| Item | Amount |
|--|-------------------|
| Cost of New Pump | \$1,425.00 |
| Reimbursement of labour costs | 1,135.00 |
| Unpaid Utilities | -796.50 |
| Total Monetary Order to Tenants | \$1,764.00 |

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portions of the landlord and tenants' monetary claims are 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: October 22, 2018

Residential Tenancy Branch