



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT OLC OT PSF RPP

Introduction

This case involves a tenant's dispute against their former landlord for compensation related to the destruction of the rental unit from fire.

The tenant applied for dispute resolution under the *Residential Tenancy Act* (the "Act") on January 31, 2019, and I presided over a dispute resolution hearing on March 14, 2019. The tenant and the landlord's legal counsel attended the hearing, and I gave them full opportunity to be heard, to present evidence, to make submissions, and to call witnesses. Landlord's counsel confirmed that there is only one legal landlord on the tenancy, and as such I have revised the style of cause (the cover page) to reflect this.

The parties did not raise any issue with respect to the service of documents.

I have only reviewed and considered oral and documentary evidence that met the requirements of the Act's *Rules of Procedure*, under the Act, to which I was referred, and that is relevant to the issues of the dispute.

Preliminary Issue: Dismissal of Claims Unrelated to Compensation

I reviewed the tenant's application at the beginning of the hearing and he clarified and confirmed that while there were other claims made at the time of his application, he presently seeks compensation only in respect of this matter. As such, I dismiss the other claims made under sections 62 and 65 of the Act without leave to reapply.

Issue to be Decided

Is the tenant entitled to compensation as a result of a fire destroying the rental unit?

Background and Evidence

The tenant testified that on January 17, 2019, roofers accidentally set a fire to the roof of the building in which the rental unit was located. Because of the fire, the tenant, along with another occupant and the landlord were forced out of the building. He explained that he was “kicked out” of the rental unit. Fortunately, the tenant was at the gym when the fire occurred.

The tenant moved into the rental unit in May 2014, and rent was \$725.00, later increased to \$775.00 by the time the tenancy ended. He paid a security deposit of \$362.50.

Thanks to the fire, the tenant was forced to move five years’ worth of belongings into storage, which has cost him \$424.00. He also incurred moving expenses of \$300.00. And, he estimated that he lost approximately \$200.00 worth of food that was in the rental unit’s refrigerator. In addition, he seeks the return of the security deposit, along with half a month’s rent in the amount of \$365.00.

The tenant did not submit any documentary evidence to substantiate the expenses, such as receipts. He testified that he had receipts and could submit them later if requested.

Landlord’s counsel took no issue with the facts as described by the tenant in respect of the fire and what happened as a result. However, he noted that the tenant was not asked to leave but that it was a necessity that everyone in the building leave. Even the landlord was made homeless by the fire and resorted to sleeping on a family member’s couch.

Counsel stated that the landlord takes no umbrage with the tenant’s claim for the return of the security deposit and for the half month’s rent. However, counsel argued that there is no evidence to support the tenant’s claim for storage or moving costs, nor any evidence of what the value of the food was at the time of destruction.

He noted that while the landlord would obviously comply with any monetary order made, she is not a wealthy woman and her “ability to pay is somewhat strained.”

Compensation from the insurance companies may take some time, he added.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Here, the tenant claims compensation for losses resulting from a fire.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, for me to consider whether I grant an order for compensation: (1) has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement? (2) if yes, did loss or damage result from that non-compliance? (3) has the applicant proven the amount or value of their damage or loss? (4) has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the landlord did not object to the tenant's claims for compensation in the amount of \$727.50 for the security deposit and for the balance of the rent. I grant him a monetary award for this amount.

The tenant testified that, because of the fire, he was required to hire a moving truck (and four guys) to move his personal property into a storage locker for two months. He claimed that this cost him \$724.00. And he claimed for food in the amount of \$200.00.

Based on the evidence of the parties, I find that the landlord, due to the tenancy agreement being frustrated, has not failed to comply with the Act, the regulations, or the tenancy agreement. Under the *Frustrated Contract Act* (RSBC 1996, c. 166), and consistent with the doctrine of frustration, parties to a contract are discharged or relieved from fulfilling their obligations under the contract when that contract has been frustrated. 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. This is the situation here. While the tenant cannot claim for losses

incurred after the fire against the landlord, he may retain the legal right to pursue damages against the roofing company.

In the alternative, if the landlord had failed to comply with the Act, the regulations, or the tenancy agreement, there is no documentary evidence supporting the tenant's claim for the loss of food and for moving and storage expenses. Any documentary evidence to support the tenant's claim would have had to be submitted at the time the tenant filed his application for dispute resolution, or, no later than 14 days before the hearing, pursuant to the *Rules of Procedure*.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has not provided any evidence, such as invoices, receipts, or banking statements, to establish his claim.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for costs related to food loss, moving, and storage.

As noted, the tenant may wish to consider seeking compensation from the roofing company for the above-noted claims.

Conclusion

I hereby grant the tenant a monetary order of \$727.50 which must be served on the landlord. This order may be enforced in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: March 14, 2019

Residential Tenancy Branch