



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR FFT

Introduction:

Both parties attended and gave sworn testimony. The tenant said that they served the Application for Dispute Resolution dated March 30, 2019 on the landlord and he agreed he received it. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order for a rent rebate pursuant to Sections 7, and 67 for costs incurred as they had to vacate for landlord repairs and pay rent elsewhere; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. They agreed the tenancy commenced July 1, 2018 on a fixed term to June 30, 2019, that monthly rent was \$3200 and a security deposit of \$1600 was paid. It was undisputed that there was a fire in the strata complex and the tenant was required to vacate their unit from the middle of January 2019 to May 2019 for safety reasons. He said there was extreme delay, in his opinion, in doing the repairs. The landlord said the strata were handling the repairs and he had no control over the timing. The tenant claims as follows:

1. A rebate of rent of \$3200 a month from February 2019 to April 2019 plus \$1600 for January 2019 for the unit was uninhabitable and they paid rent for those months. They also paid rent elsewhere.
2. \$600 for moving, storing and returning their possessions. Receipts in evidence.

The landlord said the tenant agreed to obtain tenant's insurance pursuant to an Addendum to his lease, clause 7. He also said he advised them verbally to get in touch with his insurance broker if they needed tenant's insurance so they would be covered in event of loss. The tenant agreed they never got tenant insurance. In answer to a question, he said he contacted one of the insurance brokers and they advised him that their tenant insurance package would cover tenants' accommodation in the event of fire or flood.

The landlord said the tenant also minimized their costs as the wife and son visited abroad and the male tenant lived at a relative's home. The tenant said he paid rent to the relative.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant/applicant to prove on the balance of probabilities that they suffered loss due to act or neglect of the landlord. I find the landlord's evidence credible that the tenant signed an addendum to his lease agreeing in clause 7 "to obtain tenant's insurance to cover possessions owned by the tenant and to protect the tenant against liability for accident". His credibility is supported by the signed addendum in evidence.

I find the landlord did not cause the fire and did not violate the Act through act or neglect. I accept their evidence that the strata controlled the timing of the repairs and the landlord had no control of their contractors or schedule. Therefore, I find the landlord did not, through act or neglect, cause the tenants' losses.

I find the weight of the evidence is that the tenant violated their signed tenancy agreement by not obtaining tenant insurance. According to their evidence, an insurance company has subsequently advised them that if they had had that company's tenant insurance, their accommodation and other losses due to the fire would have been covered. Therefore, I find the tenant through their own neglect caused them to suffer the losses they claim. I dismiss their application.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. I find them not entitled to recover the filing fee due to lack of success.

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 16, 2019

Residential Tenancy Branch