Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

In this dispute, the tenants seek compensation against the landlords under section 67 of the *Residential Tenancy Act* (the "Act"), and, recovery of the filing fee under section 72 of the Act.

The tenants applied for dispute resolution on October 9, 2019 and a dispute resolution hearing was held on February 24, 2020. The parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that the tenants did not serve the landlords with the Notice of Dispute Resolution Proceedings, as is required by both Rule 3.1 of the *Rules of Procedure* and section 59(3) of the Act. As I explained to the parties, this is crucial to any claim as it gives the other side an opportunity to prepare their defense and submit evidence. In this case, the landlords only found out about the dispute because of an automated notification email sent to them by the Residential Tenancy Branch. All of this said, the only primary evidence submitted by the applicant was a copy of a written tenancy agreement, which the landlords were familiar with. As such, despite the tenants' noncompliance with the *Rules of Procedure* and the Act, I decided to hear and consider the tenants' claim.

Issues

1. Are the tenants entitled to compensation in the amount of $34,800 for a breached tenancy agreement?

2. Are the tenants entitled to compensation for recovery of the filing fee of $100?

Background and Evidence

The tenants testified that they signed a written tenancy agreement on August 28, 2019, a copy of which was submitted into evidence. The tenant T.S. and the landlord J.B. both affixed their signature to the tenancy agreement (referred to by the parties as "the lease") on August 28, 2019. The tenancy was to commence on October 1, 2019. Monthly rent was to be $2,900.00 and the tenants paid a security deposit, which was returned to them.

Shortly after the tenants entered into the agreement, they gave notice to end their existing tenancy. However, shortly after that the landlords contacted the tenants to advise that they should probably start looking for another place, because financing on a second home was likely going to fall through. The tenants ended up having to look for another place, which, while it has a lower rent, has a higher heating cost.

The tenants argued that they are entitled to compensation in the amount of $34,800 (which represents twelve months' worth of what they would have paid in rent on the rental unit) because the breach of the tenancy agreement resulted in them being "stuck" in a place that was "worse" than what they hoped to move into. The breach put them in "a bad spot." Tenant N.B. added that she was 7 months pregnant when they signed the tenancy agreement, so the subsequent look for a new place and inevitable move (into another rental unit in mid-October 2019) put considerable stress on her.

The landlord (J.B.) started his testimony by commenting that he was "trying to keep calm" and was "pretty upset," as this was the first that he knew that the tenants were claiming $34,800. He explained that the tenants were due to move out of their old place at some point anyway, as their landlord was supposed to be moving their family in.

Second, he explained in detail about when they were in the process of obtaining a second mortgage, the bank told them to "go ahead and get a tenant." The financing on the landlords' second home was, for all intents and purposes, likely to go through. So, they found potential tenants – the tenants in this dispute – and entered into a tenancy agreement with them. Unfortunately, the bank and credit bureau were beginning to give the landlords the runaround, asking for more and more documents. By September, financing was "not looking definite," and they told the tenants to "better look for something else." The landlord testified that he tried helping the tenants find an alternative place, and they "did our best to help them." The landlords gave the tenants $600.00 to assist in compensating them for storage costs and moving. They returned the security deposit.

While the landlord recognized that “they [the tenants] were inconvenienced,” and empathized with the tenants’ situation, that the financing on their second home – into which they had hoped to move – fell through was beyond their control. They had no choice but to cancel the tenancy agreement because they were unable to move.

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.

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. Further, 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.

In this case, there was a tenancy agreement in place effective August 28, 2019. Section 16 of the Act states that the “the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.” In other words, the landlords were legally required to provide the rental unit to the tenants effective October 1, 2019.

However, what happened was that the landlords’ bank, not to mention Equifax, ended up not approving the landlords’ financing, *despite the bank advising the landlords that they should go ahead and get tenants.* While the tenants argued that perhaps the landlords should have secured financing before finding tenants, the tenants did not dispute the landlords’ testimony regarding the bank and credit bureau causing the financing to hit a dead end. That the bank’s decision to not approve financing – despite it telling the landlords to secure new tenants – was an unforeseeable event that prevented, or “frustrated,” the landlords from being able to fulfill their legal obligations.

Based on the evidence of the parties, I find that the landlords, due to the tenancy agreement being frustrated, have 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 a 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. That is the situation here. If there is any claim to be had by the tenants, it may be against the bank and the credit bureau, who erred in their advising the landlords to find new tenants. Indeed, having myself moved accommodations shortly after my wife gave birth to our daughter, I empathize with the tenants' stress and inconvenience that arose in this matter. But it is not the landlords who are liable for this stress and inconvenience.

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, due to the frustration of the tenancy agreement caused by the bank's actions, the landlords have not failed to comply with the Act. As such, I need not consider whether any compensatory damages flow from this, and this aspect of the tenants' claim is dismissed.

Finally, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the tenants were unsuccessful, I dismiss their claim for reimbursement of the $100.00 filing fee.

Conclusion

The tenants' application is dismissed without leave to reapply.

This decision is final and binding, except were otherwise permitted under the Act, and made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 24, 2020

Residential Tenancy Branch