



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RPP MNDC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on December 15, 2020. The Tenant applied for the multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing and provided testimony. The Landlord confirmed receipt of the Tenant's application and Notice of Hearing. I find the Landlord was sufficiently served with that package. However, the Tenant stated she did not serve any of her evidence to the Landlord because she did not know she had to. Since the Tenant failed to serve her evidence to the Landlord, I find her documentary evidence is not admissible, and will not be considered. Being unaware of the rules regarding service is not a sufficient basis for an adjournment. The Tenant also did not present any compelling reason as to why she was unable to serve the Landlord her evidence, given she has had over two months to prepare for this hearing.

The Landlord sent, via registered mail, her evidence to the Tenant at her forwarding address. The Tenant confirmed that the Landlord had the correct mailing address. The Landlord sent the package on December 2, 2020. The Tenant stated she has not picked up the package yet. Although the Tenant has not yet picked up the package, I find the Tenant is deemed to have received this package on December 7, 2020, 5 days after it was sent, pursuant to section 88 and 90 of the Act.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the Tenant confirmed that she moved out of the rental unit on or around October 7, 2020, and she moved all of her belongings out at that time. Since the Tenant stated she has obtained all her possessions back, I find it is not necessary to consider the Tenant's application for the return of her personal property. I dismiss this ground and will not be addressing it any further.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for damage or loss under the Act?

Background and Evidence

Both parties agree that monthly rent was \$950.00 per month, due on the first of the month. The Tenant stated that there was a flood in her rental unit at the end of September 2020, and she subsequently moved out by October 7, 2020, while flood cleanup and remediation was occurring.

The Landlord explained that this rental unit is in a basement suite, and there was a plumbing issue upstairs on September 30, 2020, which led to the flooding of the kitchen, and entrance area of the rental unit. The Landlord stated that they immediately had a flood restoration company come in and do drying, cleaning, and initial cleanup work to mitigate the risk for mould. The Landlord stated that this lasted for a couple of weeks. The Landlord further explained that they had several conversations with the remediation professionals around that time, all of whom said the repairs would take at least 3-4 months, given the variety of trades involved, and the COVID-19 delays for labour.

The Landlord explained that the kitchen ceiling and walls had to be removed, and all of the kitchen cabinets had to be taken out. The Landlord explained that the kitchen area where the flood happened is right at the entrance to the rental unit, and there was no way for the tenancy to continue, since access to the rest of the unit was totally cut off for the duration of the remediation, which was months long.

The Landlord explained that the construction began sometime in late November 2020, and continues to this day. The Landlord explained that there is still drywall finishing, painting, cabinet installation, countertop installation, and re-insulation. The Landlord

estimates that this could take at least another month, especially given COVID-19, and the holiday season. The Landlord explained that because this is an insurance claim, and there is an active pandemic, the timelines are even longer than they normally would be.

When asked during the hearing to explain how she arrived at the amount listed on her application, the Tenant stated that she wanted money from the Landlord to help her pay for moving, and finding a new place. The Tenant stated she was “booted out” for no reason, and she believed she is entitled to 3-4 months compensation because the Landlord kicked her out to do renovations. The Tenant did not provide any further breakdown of how she arrived at \$12,000.00 for the amount she is seeking. The Tenant feels she was “renovicted”.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

When two parties to a dispute provide equally plausible 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.

First, I will consider whether or not the tenancy agreement was frustrated by the flood that occurred in the rental unit. I turn to the following portion of the Act:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 *[tenant's notice]*;
 - (i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;
 - (ii) section 46 *[landlord's notice: non-payment of rent]*;
 - (iii) section 47 *[landlord's notice: cause]*;

- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Next, I turn to the following portion of the Act:

92 The ***Frustrated Contract Act*** and the doctrine of frustration of contract apply to tenancy agreements.

Frustration is an English contract law doctrine that acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.

If an event occurs which causes an inordinate delay in the performance of the contract, frustration may be held. However, it must be a serious delay which affects the intended purpose of the contract. I accept that a flood occurred on September 30, 2020. It appears the flooding mostly affected the kitchen and entrance to the rental unit. I note the kitchen ceiling, cabinets, counters, appliances, and entrance had to be completely disassembled for an extended period of time due to a flood which occurred above the rental unit. I accept that this was not caused by negligence or anything deliberate. I find the tenancy was frustrated as of that date. Pictures were provided by the Landlord to show the nature and extent of the damage.

In making this determination, I note that the kitchen had to be effectively decommissioned while the remediations were being completed. I also note the kitchen is part of the entrance to the suite, and continued access to the rental unit was not reasonable or safe while the kitchen was being repaired. I do not accept the Tenant's position that the repairs could have been done in days/weeks. As of the time of this hearing, I note it has already been 2.5 months since the flood, and it appears it will be at

least another 1 month before the suite is fit for occupancy. I find this inordinate delay is sufficient to frustrate the tenancy agreement, as there was limited to no access to the rental unit during this time, and no kitchen. Although this event was unfortunate, it does not appear to be anyone's fault.

Given the tenancy agreement was frustrated as of September 30, 2020, I find the tenant was not "renovicted". The Tenant has not sufficiently explained on what basis she would be entitled to \$12,000.00 in damages. I also note the Tenant provided no breakdown as to how this amount was calculated. The onus is on the applicant to explain how the amounts were calculated, and what they are based upon. The Tenant is expected to provide a detailed breakdown of her monetary claim, yet this was not done, and she did not explain the portion of the Act that was breached such that she would be entitled to the amount sought.

I note the Tenant does not appear to have any Tenant's insurance, and I do not find the absence of this insurance is the responsibility of the Landlord, given it was accidental in nature. I dismiss the Tenant's application, in full, without leave.

Conclusion

The Tenant's application is 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: December 15, 2020

Residential Tenancy Branch