



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANCHO MANAGEMENT SERVICES (B.C.)
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

On July 12, 2021, the Tenants submitted an Application for Dispute Resolution under Section 54 of the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit and to be reimbursed for the cost of the filing fee. The matter was set for an expedited participatory hearing via conference call.

The Landlord’s Agents and the Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

The parties testified that they exchanged the bulk of the documentary evidence that I have before me. The Tenants stated that they submitted a batch of pictures late to the Residential Tenancy Branch and also sent them to the management company via email. The Landlord’s Agents stated they did not receive them, and the Tenants didn’t refer to them during the hearing. As such, I find the evidence that was presented to me during this hearing was admissible.

Issues to be Decided

Should the Tenants receive an Order of Possession, in accordance with section 54 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

Unless otherwise stated in this decision, only documentary evidence presented or referred to by the parties during the hearing has been considered, pursuant to rule 7.4 of the Rules of Procedure.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on May 15, 2019 and continued as a month-to-month tenancy. The rent was \$1,990.00 and due on the first of each month. The Landlord collected and has since returned to the Tenants, a security deposit in the amount of \$995.00.

Both parties agreed that a fire occurred in the laundry room, specifically the dryer, of the rental unit on March 30, 2021, and the Tenants were unable to live in the unit since that time.

The Tenants testified that the fire itself did not cause significant damage but that the smoke and resulting response from the fire department did cause extensive damage. The Tenants were required to stay in a hotel for the first couple of weeks and then arranged an Airbnb for the next few months.

The Tenants submitted correspondence between themselves and the management company and testified that the management company kept indicating that the Tenants would be able to move back into the rental unit once the repairs were completed.

The Tenants submitted an email, dated May 25, 2021, where the management company acknowledged that the repairs would take longer than expected. The management company offered the Tenants the option to rent one of two rental units available in the same complex. The Tenants responded that they would like to do so; however, the management company retracted the offer on June 2, 2021 as the units were for sale and the Landlord preferred to keep them vacant.

The Tenants submitted a letter from the Landlord, dated June 15, 2021, which stated that the Landlord considered the tenancy frustrated due to the fire and that that tenancy was now terminated.

The Tenants applied for dispute resolution on July 12, 2021.

The Tenants submitted correspondence from the management company, dated July 20, 2021, that offered the Tenants an opportunity to move into one of the rental units in the complex; to start a new tenancy for a fixed six-month term.

The Tenants acknowledged that they did not respond to the management company's offer as they were hoping to move back into the rental unit and were awaiting the dispute resolution hearing.

The Tenants are requesting an Order of Possession for the rental unit as they believe the Landlord was slow in starting the repairs and have further delayed the Tenants' ability to move back in by making improvements to the rental unit to prepare it for sale. The Tenants acknowledged that the rental unit was not ready for occupation as of the date of this hearing.

The Landlord submitted documentation to support their testimony that they did not delay the repairs, and as a result of the extensive repairs and uncontrollable length of time to complete, the tenancy has been frustrated.

The Landlord submitted that the slow progress of the repairs was due to the extensive damage, the need to communicate thoroughly with the various parties including the strata, the insurance companies for the parties, the demolition and remediation services and the contractors.

The Landlord submitted that they immediately liaised with insurance companies and arranged emergency work that included making the unit safe with an electrician and installing drying equipment. Demolition and restoration could not be carried out until the unit was dry, clean and safe. As a result of the heavy smoke damage, air scrubbers were installed and the removal of the Tenants' entire contents by their insurer was necessary prior to any further work.

The Landlord submitted photos and stated that the demolition of the interior of the unit was extensive and the cost of the repair would be in excess of the \$25,000.00 deductible under the strata insurance policy. The Landlord submitted that it was necessary to "gut" much of the rental unit before restoration could be commenced. The Landlord stated that the rental unit is still not ready for occupation.

The Landlord testified that the rental unit is only being repaired within the scope of the remediation and that the Landlord is not doing any extra improvements.

The Landlord submitted that the tenancy has been frustrated due to the fire and the subsequent lengthy timeline for repairs to be completed. The Landlord testified that the various events that have frustrated the tenancy have been beyond the Landlord's control. The Landlord stated that an Order of Possession is not warranted, especially after the Landlord has offered to provide alternate rentals to the Tenants.

Analysis

Residential Tenancy Policy Guideline 34 states that 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.

Section 44(1)(e) of the Act states that a tenancy ends if the tenant or the landlord gives notice to end the tenancy if the tenancy agreement is frustrated.

In this case, based on the similar evidence of both parties, I find that the electrical fire that occurred on March 30, 2021, caused extensive damage to the rental unit and forced the Tenants from the unit.

I find that both parties agreed that the repairs to the unit are ongoing and that the Tenants have not been able to move back into the unit. The Tenants stated that the Landlord has delayed the repairs; therefore, delayed the ability for the Tenants to move back into the unit. When I consider if there has been a delay, I refer to the Landlord's testimony and submissions. I find that the length of time it has taken to liaise with multiple insurance companies, and the strata, to determine the scope of work and then to coordinate the contractors and trades to complete the demolition and subsequent remediation, is not unreasonable.

I find that there is no evidence in front of me that suggests that either party is at fault for the fire. I accept that the Tenants have not been able to move into the rental unit due to the extensive renovations that have left the rental unit, at times, without electricity, walls or floors. As a result, I find that the Tenancy Agreement (the contract between the Landlord and Tenants regarding occupation of the rental unit) has been frustrated, pursuant to section 44(1)(e) of the Act, as it is impossible to meet the original terms of the Tenancy Agreement.

Both parties agreed that the Landlord provided the Tenants with notice that the tenancy was ended due to frustration, in the letter dated June 15, 2021. I find that the Landlord correctly interpreted the tenancy as frustrated as the repairs were ongoing and that it appeared that it would take significantly longer before the rental unit was ready to

occupy. As such, I find that this tenancy ended on June 15, 2021, two and a half months after the fire.

Under section 54 of the RTA, a tenant may apply for an order of possession for the rental unit if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

In this case, the Tenants applied for an Order of Possession on July 12, 2021. As stated above, I find that the tenancy ended on June 15, 2021; therefore, I find that the Tenants failed to provide sufficient evidence that a tenancy exists and therefore, there is no authority for me to issue an Order of Possession to the Tenants. As such, I dismiss the Tenants' Application for Dispute Resolution.

As I have dismissed the Tenants' Application for an Order of Possession, I also dismiss the Tenants' claim for compensation for the filing fee.

Conclusion

In this matter, I find that the tenancy has been frustrated and dismiss the Tenants' Application for Dispute Resolution.

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: August 24, 2021

Residential Tenancy Branch