



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, CNL-4M, OLC, MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the Residential Tenancy Act (the “Act”) to cancel Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit (the “Notice”) issued June 18, 2021, to request an Order for the Landlord to comply with the *Act*, for a monetary order for compensation, and for an order to provide services or facilities required by the tenancy agreement or law. The matter was set for a conference call.

An Agent for the Landlord (the “Landlord”) and both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The Tenants testified that they had been served with the Landlord’s documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – *Tenants’ evidence*

During the hearing, the Landlord testified that they had not been served with an evidence package from the Tenants.

The Tenants testified that they had served their evidence package to the Landlord in person at the Landlord's office.

The Landlord again testified that they had not been served with the Tenants' evidence package.

Sections 3.1 and 3.14 of the Residential Tenancy Branches Rules of Procedure states the following regarding the service of evidence:

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

“3.14 Evidence not submitted at the time of Application for Dispute Resolution

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing.”

The Tenants were asked to provide evidence to support their claim that they had served their evidence package to the Landlord. The Tenants testified that they had no evidence to show that their evidence package had been served to the Landlord.

In the absence of sufficient evidence to support the Tenants' claim that their evidence package had been served to the Landlord in accordance with the rules of procedure, I find that I must not consider the Tenants' documentary evidence in my final decision for these proceedings.

Preliminary Matter – *Tenancy Ended*

At the beginning of these proceedings, the Parties agreed that this tenancy ended on May 25, 2021. When there was a flood in the rental unit, that was so severe that the rental unit became uninhabitable.

The Tenants testified that they moved out that same day and have not been back to the rental unit since.

The Landlord testified that they refunded six days of rent to the Tenants, for the period between May 25 and May 31, 2021, due to the tenancy agreement being frustrated by the flood in the rental unit.

I accept the agreed-upon testimony of these parties and find that this tenancy ended on May 25, 2021. As this tenancy had already ended before the date of these proceedings, I find that there is no reason for me to make a decision on the Tenants claims to cancel Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of the Rental Unit, issued June 18, 2021, for the request for an Order for the Landlord to comply with the Act, and for an order to provide services or facilities required by the tenancy agreement or law, as reach of these issues related to an ongoing tenancy.

I will continue in these proceedings on the remaining matter of the Tenants' application for a monetary order for compensation.

Issue to be Decided

- Are the Tenants entitled to monetary compensation under the *Act*?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that there had been a flood in the rental unit on May 25, 2021, which had caused extensive damage to the rental unit and that due to this flood, they were forced to live in a hotel for 69 days, between May 25, 2021, and August 1, 2021. The Tenant's are requesting \$5,625.00 in the recovery of their costs to stay in a hotel.

The Tenants testified that the Landlord had not taken proper care of the rental property. Specifically, they had not cleaned the gutters and water drainage system, and that this lack of care caused the gutters and water drainage pipes to become clogged and that this caused the flood.

The Landlord testified that they did take proper care of the rental property and that the gutters and water drainage pipes were not clogged. The Landlord testified that the tenancy was frustrated due to a flood, that they returned the required portion of the rent and that they should not have to pay for the Tenants to stay in a hotel for 69 days.

Analysis

Based on the above oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

The Tenants are claiming compensation in the amount of \$5,625.00 in the recovery of their costs to stay in a hotel. Awards for compensation due to damage or losses are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that

compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In order to determine if the Tenants are entitled to compensation, I must first determine if there had been a breach of the *Act* by the Landlord. The Residential Tenancy Branch Policy Guideline number 34. Frustration states the following:

Guideline number 34. Frustration

“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.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into. A party cannot argue that a contract has been frustrated if the frustration is the result of their own deliberate or negligent act or omission.

The Frustrated Contract Act deals with the results of a frustrated contract. For example, in the case of a manufactured home site tenancy where rent is due in advance on the first day of each month, if the tenancy were frustrated by destruction of the manufactured home pad by a flood on the 15th day of the month, under the Frustrated Contracts Act, the landlord

would be entitled to retain the rent paid up to the date the contract was frustrated but the tenant would be entitled to restitution or the return of the rent paid for the period after it was frustrated.”

During the hearing, I heard contradictory testimony from both parties regarding the maintenance of the rental property. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Tenants who filed this claim and who holds the burden of proof in these proceedings.

After reviewing the testimony and the documentary evidence accepted into these proceedings, I find that there is no evidence before me to show that the Landlord had not repaired or maintained the rental unit as required.

Overall, I find that the Tenants have not provided sufficient documentary evidence to satisfy me that the Landlord had breached the *Act* in any way during this tenancy or in how this tenancy ended. In the absence of a breach of the *Act* by the Landlord, I must dismiss the Tenants’ claim for compensation in its entirety.

Conclusion

The Tenant’s application is dismissed.

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: October 22, 2021

Residential Tenancy Branch