



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ET, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order for early termination of a tenancy, pursuant to section 56;
- an authorization to recover the filing fee for this application, under section 72.

The hearing on November 23, 2021 was adjourned until December 03, 2021. The landlord attended both hearings. The tenant attended the hearing on November 23, 2021. The landlord's agent MN attended the hearing on December 03, 2021. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord affirmed that on November 14, 2021 there was a major flood in the rental unit because of a severe weather event that impacted the city where the rental unit is located. The landlord affirmed the rental unit was flooded with 5 feet of water, mud, and debris due to the severe weather event and became uninhabitable.

The landlord affirmed that on November 22, 2021 the city where the rental unit is located issued an evacuation order. The tenant removed some of her belongings from the rental unit and did not return the keys. The landlord affirmed she has been trying to repair the rental unit, but the unit does not currently have electricity or gas. The landlord received an email from a contractor on December 02, 2021 informing the rental unit needs extensive renovation and the contractor cannot provide a timeline for the repairs to make the rental unit inhabitable again, as several properties were damaged by the severe weather event. The landlord said she has not been able to contract another contractor because the highways that access the city where the rental unit is located have been closed.

Residential Tenancy Branch policy guideline 34 states:

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.

Based on the landlord's convincing and detailed testimony, I find the tenancy agreement is frustrated, as a severe weather event rendered the rental unit uninhabitable on November 14, 2021.

Section 44(1)(e) of the Act states: "A tenancy ends only if one or more of the following applies: the tenancy agreement is frustrated."

I find the tenancy ended on November 14, 2021, per section 44(1)(e) of the Act.

The landlord applied for the early termination of the tenancy. This claim is now moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss this application for dispute resolution.

The landlord must bear the cost of the filing fee.

### Conclusion

I dismiss the application 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 06, 2021

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Residential Tenancy Branch