



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: MNDL-S, FFL
 TT: FFT, MNSD, MNDCT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord AL applied for:

- a monetary order for damages and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant named the landlords AL and WW and applied for:

- a monetary order for damages and loss pursuant to section 67;
- a return of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord AL was represented by their agent (the “landlord”).

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

The name of the tenant provided in their application for dispute resolution differs from the name of the respondent in the landlord's application. At the outset of the hearing the tenant clarified that they have married and changed their name. They confirmed that KB is the same individual as KM identified on the landlord's application and the tenancy agreement. The landlords agreed that KM and KB are one and the same. I have identified the tenant as KB née KM in the style of cause for this decision.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to the deposit for this tenancy?

Is either party entitled to recover their filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on October 1, 2017. The monthly rent was \$1,400.00 payable on the first of each month. A security deposit of \$700.00 was paid at the start of the tenancy and is still held by the landlords.

On July 8, 2021 there was a fire in the rental building making the property uninhabitable. The tenant moved out and provided a forwarding address to the landlord in writing sometime by August 2021. The tenant confirmed that the address for service provided on their application for dispute resolution is their forwarding address. The landlord confirmed receipt of the tenant's forwarding address.

The tenant submits that the tenancy agreement became frustrated due to the fire of July 8, 2021 and seeks a return of their security deposit and pro rated rent for the month of July 2021 calculated as \$1,038.00.

The landlord attributes the fire to the tenant as they were the sole occupants of the rental building at the time. The landlord testified that they have no evidence that the fire was started or contributed to by the tenant's actions or negligence. The parties submit that the incident was reported to their respective insurance companies. Both parties agree that there has been no conclusive determination as to the cause of the fire.

Analysis

I accept the undisputed evidence of the parties that there was a fire on July 8, 2021 which rendered the rental property uninhabitable. I find that the tenancy agreement was frustrated at that time as the agreement became impossible to fulfill.

Residential Tenancy Policy Guideline 34 provides 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.

I do not find the submission of the landlord that the fire was caused or contributed to by the tenant to be supported in any evidence. The landlord's submission are more in the nature of supposition and conjecture than a conclusion based on evidence or reports from their insurers. I find little basis for the landlord's position and find that this tenancy became frustrated without the fault of either party.

I find that the tenancy agreement was frustrated as of July 8, 2021 and the tenancy ended on that date.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

In the present case the parties agree that the tenant provided a forwarding address shortly after the tenancy ended and the landlord filed their application for dispute resolution on July 26, 2021 seeking authorization to retain the deposit. I find that the landlord was within the statutory timeline to file their application.

Under the circumstances as the tenancy has been frustrated and restoring the rental unit to its pre-tenancy condition is no longer possible I find the tenant is entitled to a full return of the security deposit for this tenancy.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I accept the tenant's evidence that they paid rent in the amount of \$1,400 for July 2021. As stated above I find that this tenancy ended on July 8, 2021 due to the fire which destroyed the rental building. Consequently, I find that the landlord ought return the pro rated rent collected for July, 2021 as the landlord was unable to provide a habitable rental unit. I accept the tenant's calculation that the pro rated balance of the monthly rent for the period of July 8, 2021 to July 31, 2021 is \$1,038.00. I find that the tenant is entitled to a monetary award in the amount of \$1,038.00 the return of the rent paid for July 2021.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

The landlord's application is dismissed without leave to reapply.

I issue a monetary order in the tenant's favour in the amount of \$1,838.00, representing the return of the full security deposit for this tenancy, the pro rated rent for the month of July 2021 and the recovery of the filing fee. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 7, 2022

Residential Tenancy Branch