



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Neither party raised any issues in regard to the service of evidence. The landlord confirmed that he did not serve any evidence to the tenant or the Residential Tenancy Branch and that he had received all of the tenant's evidence.

I note that on the Application for Dispute Resolution the applicant has named 3 people as tenants, IdL, FBdL, and MAdL. However, the one page document submitted as a tenancy agreement stipulates that only IdL has rented the rental unit. As such, I find that IdL is the only named applicant who is a party to this tenancy. Therefore, I amend the application to exclude FBdL and MAdL as tenants.

Likewise, the applicant has named two landlords on the Application for Dispute Resolution, SR and MR. As the one-page document submitted as a tenancy agreement stipulates only that SR is the landlord I find that MR is not a party to this tenancy. Therefore, I amend the application to exclude MR as a landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for the return of rent and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted, in her Application, that the tenancy began on May 1, 2020 for a monthly rent of \$1,400.00 due on the first of each month and that she had paid a security deposit of \$700.00. The parties agree the tenancy ended as a result of flooding that occurred in November 2021.

The parties agreed the landlord provided the tenant with a check on November 21, 2021 with the notation "Reimbursement Damage Deposit". The tenant submitted that she has not cashed this cheque because she believes it to be the reimbursement for rent (for the period after the flood) and her damage deposit. The tenant seeks an additional \$420.00 for the return of rent from November 21, 2021 until November 30, 2021 as the contract was frustrated.

In support of her position the tenant submitted into evidence a letter dated November 22, 2021 to the landlord stating that due to the flooding that occurred on November 14 to 15, 2021 the rental unit is uninhabitable and that the tenancy agreement is frustrated, as of November 21, 2022. The sought the landlord to return a per diem amount of rent from November 21 to November 30, 2021. The tenants provide a link to a page on the Residential Tenancy Branch website that spoke specifically to this issue.

The landlord testified that immediately after the rental unit was flooded, he arranged and paid for the tenants to move into a rental unit in his father's house and that the tenant was allowed to stay there until they were able to either enter into a tenancy agreement with his father or decide to move to new accommodation.

The tenant testified that she did not find the father's rental unit suitable for her needs and she found a new place that she was able to rent as of November 21, 2021. As such, she moved her belongings out of the rental unit and returned her keys on November 21, 2021.

The tenant testified that she could not have afforded to move her belongings out of the flooded rental unit into the father's rental unit and then again to her new accommodation and so she had to find new accommodation as soon as possible to get her belongings out of the flooded rental unit.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 44 (1)(e) stipulates that a tenancy ends if the tenancy agreement is frustrated.

Residential Tenancy 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. A contract is not frustrated if what occurred was within the contemplation of the parties at the time the contract was entered into.

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.

While I agree with the tenant's position that the original tenancy agreement was frustrated, I disagree that it became frustrated on November 21, 2021. If the flooding occurred on November 14 or 15 then that is the date the agreement became frustrated. The only thing, in this case, that is important about November 21, 2021, is that it appears to be the date the tenant took possession of her new rental unit.

As such, pursuant to Policy Guideline #34, the landlord would normally be required to return rent to the tenant for the period from November 15, 2021 to November 30, 2021. However, I am satisfied that the landlord was able to provide accommodation, immediately, that was available to the tenant for at least this same period.

Therefore, I am satisfied that despite the uninhabitability of the rental unit the landlord was prepared, and had paid, for the tenant to have alternate accommodation and it was the tenant who decided to vacate the alternate accommodation prior to the arranged for period.

As such, I am satisfied that the landlord found a way to live up to his obligations under the tenancy agreement to provide the tenant with living accommodation until it ultimately ended, after the tenant vacated the rental unit on November 21, 2021. Therefore, I find the landlord has not violated the *Act*, regulation, or tenancy agreement and the tenant has failed, to establish entitlement to any compensation resulting.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety 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: February 15, 2022

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Residential Tenancy Branch