



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding INFINITE INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNC, FFT, MNDCT, RR**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents (the "landlord"). In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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*.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

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.

The parties agree on the following facts. The monthly rent for this periodic tenancy was \$777.08 payable on the first of each month. No deposit was paid for this tenancy. The rental unit is a single detached house. The parties agree that rent was paid in full for March 2022.

There was a fire in the property on March 3, 2022 making the property uninhabitable. The landlord submitted into evidence a Hazardous Materials Report prepared by a third-party company noting the presence of various hazardous materials that have been exposed or released due to the fire making the rental unit not fit for habitation.

The landlord issued a 1 Month Notice dated March 21, 2022. The landlord testified that they believed that they were required to issue the notice to end the tenancy.

The tenant seeks a monetary award of \$1,500.00 and gave lengthy testimony about the work they have put into the rental property, items purchased out of pocket to make the rental unit suitable for them and the state of the rental unit prior to the fire.

Analysis

I accept the undisputed evidence of the parties that there was a fire on March 3, 2022 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 find insufficient evidence to attribute the fire to the conduct or negligence of the tenant or a person allowed on the property by the tenant. I find the documentary evidence of the landlord presents some possible scenarios but there is insufficient evidence to demonstrate, on a balance of probabilities, that the fire was caused by the tenant. I find insufficient evidence to determine the actual cause of the fire and find that this tenancy became frustrated on March 3, 2022.

I find that the tenancy agreement was frustrated as of March 3, 2022 and the tenancy ended on that date. I therefore find that the 1 Month Notice of March 21, 2022 was unnecessary as the tenancy had already ended.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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.

I accept the undisputed evidence of the parties that rent for the month of March 2022 was paid in full in the amount of \$777.08. As stated above, I find that the tenancy ended on March 3, 2022 due to the fire which rendered the property uninhabitable. Consequently, I find that the landlord must return the pro rated rent collected for the month as the landlord was unable to provide a habitable rental unit after March 3, 2022. I calculate the pro rated balance of the monthly rent for the period of March 4, 2022 to March 31, 2022 is \$701.88. Accordingly, I find the tenant is entitled to a monetary award in that amount for the return of the rent paid for March 2022.

I find little support for the balance of the tenant's claim for a monetary award. I find the submission consist of unsupported testimony and a series of complaints and

accusations without documentary materials in support. The tenant says that they incurred considerable losses to pay for upkeep of the rental unit but have provided no receipts, invoices or documentary evidence of payment. I further find little evidence to support that the tenant is entitled to a retroactive reduction in the rent for this tenancy. I find the testimony of the tenant and their various complaints and accusations to be insufficient to meet their evidentiary onus. Taken in its entirety I find the tenant has not established this portion of their claim on a balance of probabilities and consequently dismiss this portion of the application.

As the tenant was partially successful in their application I find it appropriate to award them partial recovery of the filing fee in the amount of \$50.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$751.88. 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: July 21, 2022

Residential Tenancy Branch