Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

The Tenant applies for the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order for monetary compensation pursuant to s. 67;
- an order for the return of her security deposit pursuant to ss. 38 and 67; and
- return of her filing fee pursuant to s. 72.

S.S. appeared as the Tenant. L.C. appeared as the Landlord. Y.P. appeared as translator and assistant to the Landlord. Y.P. certified that she was able to translate Mandarin to English and vice versa on behalf of the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Both parties confirmed having served the other side with their application materials via email. Both parties confirm receipt of the others application materials. Based on the mutual acknowledgments of receipt, I find that pursuant to s. 71(2) of the *Act* both sides were sufficiently served with the others application materials.

Issues to be Decided

1) Is the Tenant entitled to monetary compensation?
2) Is the Tenant entitled to the return of her security deposit?
3) Is the Tenant entitled to the return of her filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit in 2016.
- The Tenant surrendered the keys to the rental unit on February 29, 2020.
- Rent of $995.00 was to be paid each month.
- An security deposit of $450.00 was paid by the Tenant to the Landlord.

The parties did not provide a copy of the tenancy agreement. The rental unit is a basement suite.

The Tenant advised that she was given a Two-Month Notice to End Tenancy (the "Two-Month Notice") on the basis that the Landlord's parents were to occupy the rental unit. A copy of the Two-Month Notice was put into evidence by the Tenant. It lists as its effective date March 31, 2020.

The Tenant advised that the rental unit flooded on or about January 25, 2020. In the Tenant's description, water within the rental unit was "ankle deep". The Tenant alleges that the Landlord or her husband failed to have the sump pump for the basement turned on such that the flooding was caused by their actions or neglect. The Tenant says that BC Hydro attended the rental unit and said that sump pump had been turned off and that the Landlord's husband turned it on, after which point the water cleared shortly thereafter.

The Landlord acknowledges the basement flooded at the end of January 2020 and that she and her husband called remediation companies to address the issue, though none were available. The Landlord indicates that the husband obtained a rental to clear out the flooding, though was unclear on what was obtained or when. The Landlord denies turning off the sump pump.

The Tenant testified that she contacted her insurance provided to make a claim. She says that she was told on February 3, 2020 that the rental unit was uninhabitable by a representative for her insurance company as there may have been water enter the suite

from the sewer system. The Tenant advised that her content insurance covered some of her losses, though the cost of replacing her items exceeded her insurance coverage.

The Tenant argued that she did not receive her security deposit or one month's rent in compensation after the Two-Month Notice was issued. The Tenant also includes a monetary order worksheet in which she claims for various items that were lost in the flood, including rent at her new rental for February, moving costs, and her insurance deductible.

The Landlord confirmed that none of the deposit was returned. She argued that the rental unit was left in an unclean state and that the Tenant did not pay rent for February 2020. She indicates that the tenancy was to end on March 31, 2020 and that her one month's rent in compensation was to be in March 2020.

The Tenant advised that she provided the Landlord with her forwarding address on February 29, 2020. A picture of a note left within the rental unit dated February 29, 2020 shows the Tenant's forwarding address. The Landlord confirmed receiving the forwarding address on February 29, 2020.

The Tenant testified that there was no written move-in or move-out inspection. The Landlord did not provide a copy of the inspection report and was unsure whether one had been completed.

The Landlord confirmed that she never filed an application claiming against the security deposit.

Analysis

The Tenant seeks monetary compensation and return of her security deposit.

As a preliminary matter, there is some consideration that ought to be made with respect to the end of the tenancy and whether the limitation period applies. Section 60 states that if the *Act* does not state a time by which an application is made, it must be made within 2 years of the end of the tenancy.

Presently, there is some dispute discrepancy with respect to when the parties say the tenancy ended. The parties confirm that the Tenant surrendered the keys to the rental unit on February 29, 2020, the Landlord argues the tenancy was to end on March 31,

2020, meanwhile the parties confirm that the rental unit was flooded at the end of January 2020. The Tenant describes a rental unit that was ankle deep in water. The Tenant further testified that on February 3, 2020 she was told the rental unit was uninhabitable.

I find that under the circumstances the doctrine of frustration applies. Policy Guideline #34 provides the following description with respect to the doctrine of 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.
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> 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.
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> 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.

It is undisputed that the basement had flooded. The Landlord did not dispute the Tenant's characterization that the water was ankle deep. It is unclear what steps, if any, the Landlord took to remediate the rental unit. However, water ingress of such a

significant nature requires remediation for mould and other property damage, particularly if sewage has come up through the sewer.

I accept the Tenant's evidence that the rental unit was rendered uninhabitable following the flood. I find that the tenancy was frustrated by the flood as the Tenant was deprived of the main benefit from the tenancy agreement, which is a rental unit fit for occupation. I find that the tenancy ended on February 3, 2020 when the rental unit was declared uninhabitable by the Tenant's insurance provider.

Upon review of the information on file, I find that the Tenant filed her application on January 24, 2020. Accordingly, I find that the Tenant filed her claim within the 2-year time limit imposed under s. 60 of the *Act* as the tenancy ended on February 3, 2020.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenant claims for various personal property and other costs associated with the flood. However, these claims are premised on the Tenant's argument that Landlord caused the flood either by intentionally turning off the sump pump or neglecting to ensure the sump pump was on. The Tenant raises a bare allegation that is specifically denied by the Landlord.

I find that it is unlikely that the Landlord would have knowingly put her own property at risk by failing to have the sump pump on. This would run contrary to the Landlord's rational self-interest. There may be circumstances which would have resulted in the sump pump turning off, including a trip in the circuit or other mechanical failure. It is far more likely that the flood within the rental unit was an act of nature in which both parties

were victims. I find that the Tenant has failed to show that the Landlord breached the *Act* with respect to the flood damage. I dismiss her claims for costs associated with the flood.

Looking at the Tenant's argument that she was not compensated for one month's rent after receipt of the Two-Month Notice, s. 51(1) of the *Act* requires landlords who issue a notice to end tenancy under s. 49 to compensate tenants with one month's rent payable under the tenancy agreement on or before the effective date of the notice. In this instance, the Landlord argued that the Tenant did not pay rent for February 2020 and that rent for March 2020 was to be compensated but that the Tenant had already vacated the rental unit. The Landlord's argument is non-sensical. The basement had flooded. It is unreasonable to expect the Tenant to pay rent on a rental unit that was uninhabitable.

I find that the Tenant has established that she was not compensated by the Landlord for one month's rent as required under s. 51(1) of the *Act*. The parties confirmed that rent payable was $995.00. Accordingly, I find that the Tenant is entitled to $995.00 in compensation due to the Landlord's breach of her obligation to compensate the Tenant under s. 51(1) of the *Act*.

Looking next at the security deposit, Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38.

It is undisputed that the Tenant provided her forwarding address on February 29, 2020. The Landlord admits that she did not file an application claiming against the security deposit and that she has retained the security deposit. Accordingly, I find that the Landlord failed to either return the security deposit or claim against it within 15-days of February 29, 2020 as required under s. 38(1) of the *Act*.

Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit. I find that s. 38(6) of the *Act* is triggered such that the Tenant is entitled to double the return of the security deposit, which in this case is $900.00 ($450.00 x 2).

Conclusion

The Tenant has established a monetary claim for compensation under ss. 51 and 67 of the *Act* in the amount of $995.00. The Tenant has further established she is entitled to the double return of her security deposit under s. 38(6) of the *Act*, totalling $900.00.

The Tenant was partially successful in her application. I find that she is entitled to her filing fee. I order pursuant to s. 72(1) of the *Act* that the Landlord pay the Tenant's $100.00 filing fee.

I make a total monetary order taking the following into account:

Item	**Amount**
Monetary Compensation under ss. 51 and 67	$995.00
Double return of the security deposit under s. 38(6)	$900.00
Return of the filing fee under s. 72(1)	$100.00
Total	$1,995.00

Pursuant to ss. 38, 51, 67, and 72, I order that the Landlord pay **$1,995.00** to the Tenant.

It is the Tenant's obligation to serve the monetary order on the Landlord. If the Landlord does not comply with the monetary order, it may be filed by the Landlord with 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: September 08, 2022

Residential Tenancy Branch