



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on May 15, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Compensation for monetary loss or other money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call at 1:30 P.M. (Pacific Time) on January 16, 2023, and was attended by the Tenant, the Tenant's spouse M.N., the Landlord, and the Landlord's daughter G.S., who is also an owner. All testimony provided was affirmed. As the Landlord acknowledged service of the Notice of Dispute Resolution Proceeding (NODRP), and stated that there are no concerns regarding the service date or method, the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over me and one another and to hold their questions and responses until it was their opportunity to speak. The parties were also advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and confirmed that they were not recording the proceedings.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses confirmed in the hearing.

Preliminary Matters

Although the Tenant acknowledged receipt of the Landlord's documentary evidence and raised no arguments that it should be excluded from consideration, the Landlord denied receipt of any evidence from the Tenant, stating only that they received the NODRP. The Tenant and their spouse stated that the NODRP and the documentary evidence before me was sent to the Landlord by registered mail on May 13, 2022. A copy of the registered mail receipt showing the tracking number and a print-out of the tracking status were submitted for my consideration. The tracking information submitted shows that the registered mail was sent on May 13, 2022, and delivered on May 19, 2022.

Branch records show that all of the documentary evidence before me from the Tenant, except for the registered mail information, was submitted May 5, 2022. As this is the same date the Application was filed, and the registered mail was not sent until May 13, 2022, I find it more likely than not that the documentary evidence before me from the Tenant was included in the registered mail package sent to the Landlord with the NODRP. As the Landlord acknowledged receipt of the NODRP, and the Canada Post tracking information shows the registered mail was delivered on May 19, 2022, I therefore find that the Landlord was served the Tenant's documentary evidence on May 19, 2022, and I accept it for consideration.

Issue(s) to be Decided

Is the Tenant entitled to compensation for monetary loss or other money owed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The parties agreed that there was a verbal tenancy agreement under the Act in place, that the Tenant moved into the rental unit, which is a one story home with a basement

and crawlspace, in 2012, and that rent in the amount of \$700.00 was due on the first day of each month. The parties agreed that overland flooding occurred on November 15, 2021, after which time the Tenant began residing on a hide-a-bed in the Landlord's home. The Tenant stated that at that time they expected to be able to re-occupy the rental unit, and even paid rent for December 2021. In contrast the Landlord argued that the tenancy ended on November 15, 2021, when the Tenant vacated the rental unit due to the flood. However, the Landlord acknowledged that the Tenant did not remove their possessions at that time.

The parties agreed that there was a hearing with the Residential Tenancy Branch (Branch) on February 22, 2022, and that they reached a settlement agreement at the hearing. The file number for that matter has been recorded on the cover page of this decision and I note that the parties agreed to the following:

- The rental unit was damaged due to flooding and vacancy was required in order to allow the Landlord to obtain estimates for repairs;
- The Tenant would remove their possessions from the rental unit by March 15, 2022; and
- The Landlord would provide the Tenant with a description of necessary repairs, associated cost estimates, and a timeline for the repairs, not later than July 1, 2022.

The Tenant stated that they obtained and moved into new accommodation on April 1, 2022, but acknowledged leaving a few items behind at the rental unit. The parties agreed that the Tenant continued to pay gas and electricity bills for the rental unit between November 15, 2021, and March 15, 2022, after which time the Landlord took over the utilities. The Tenant sought recovery of \$948.47 in utilities paid during this period, as they stated that they were not residing there and the bills were exceptionally high as the Landlord had the heat and electricity going and large fans running.

The Landlord agreed that they had the heat and electricity on, and fans running, as it was winter and they were trying to dry the home out. However, they stated that they and the Tenant had a verbal agreement that they would split the utility costs 50/50, however, the Tenant denied that any such agreement existed.

The Tenant submitted copies of the utility bills, a monetary order worksheet, and a receipt for December 2021 rent. The Landlord submitted a two-page written submission and a copy of an email dated March 16, 2021.

Analysis

Based on the documentary evidence and testimony before me for consideration, I am satisfied that a tenancy to which the Act applies existed between the parties. I am also satisfied that the Tenant vacated the rental unit on November 15, 2021, as a result of serious overland flooding, and that the rental unit was never re-occupied by them after that date as it was not habitable, despite the fact that numerous possessions remained in the rental unit thereafter.

Residential Tenancy Policy Guideline (Policy Guideline) #34 states 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.

As a result of the above, I am satisfied that the tenancy was frustrated as of November 15, 2021, and that it therefore ended on that date pursuant to section 44(1)(e) of the Act. Pursuant to the *Frustrated Contract Act* and Policy Guideline #34, I therefore find that the Tenant was no longer responsible for rent or utilities at the rental unit after that date. Having reviewed the utility bills and utility billing and payment summary submitted, I am also satisfied that the Tenant paid at least the amounts sought in utilities after the end date for the tenancy and before the Landlord took over the utilities. Further to this, I am satisfied on a balance of probabilities that these amounts were very high due to the Landlord's efforts to reduce the impact of flood damage by keeping the heat on and running large fans.

However, section 7 of the Act and Policy Guideline #5 require parties seeking compensation for damage or loss to do whatever is reasonable to minimize the damage or loss and I am not satisfied that the Tenant did more than partially mitigate their loss, as there is no evidence before me that they attempted to transfer the utilities to the Landlord at any point prior to the February 22, 2022, hearing, or to have the Landlord reduce the use of heat or electricity at the rental unit in the more than four month period between when they vacated and when they agreed via settlement to remove their possessions. I am also satisfied that part of the reason the Tenant maintained utilities at the rental unit was because it was winter and they had a large number of their own possessions remaining in the rental unit, which they did not want damaged or further

damaged. As a result, I grant the Tenant recovery of only 50% of the utility costs sought in the amount of \$474.23.

As the Tenant was at least partially successful in their Application, I grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I therefore grant the Tenant a monetary order in the amount of \$574.23 and I order the Landlord to pay this amount to the Tenant.

Although much of the Landlord's written submission focussed on storage costs owed to them by the Tenant, I have not considered these costs or arguments in rendering this decision as there was no Application for monetary compensation before me from the Landlord for consideration. The Landlord remains at liberty to file such an Application, should they wish to do so. The Tenant also remains at liberty to seek recovery of rent paid after the date the tenancy was frustrated, should they wish to do so.

Conclusion

Pursuant to section 67 of the Act, I grant the Tenant a Monetary Order in the amount of **\$574.23**. The Tenant is provided with this Order in the above terms and 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 Branch under Section 9.1(1) of the Act.

Dated: February 17, 2023

Residential Tenancy Branch