



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

The tenants applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The tenants ask me to cancel a 10-day Notice to End Tenancy for Unpaid Rent, issued on 6 March 2023 [the 'Notice'].

The landlords appeared at the hearing on 4 May 2023. The tenants also appeared.

Issues to be Decided

Was the tenancy agreement frustrated?

If not, then did the Notice end the tenancy?

Background and Evidence

The parties agreed that rent was \$1,319.50, due on the first day of each month. The parties also agree that on 1 March, the tenants did not pay rent.

The tenants told me that they did not pay rent because their bank froze the tenants' account on 1 March. They said that, if their account hadn't been frozen, they would've paid the rent. They agreed that the rent was owing.

They also told me that their bank un-froze their account on 6 March.

As a result of this failure to pay rent, the landlords issued the Notice on 6 March and served it personally on the tenants at 1516 hours. The tenants conceded the efficacy of the Notice.

Then, less than two hours after serving the Notice on the tenants, the rental unit was on fire.

The landlords indicated that firefighters were able to extinguish the fire, and secured the unit, believing the fire to be suspicious. Police told the landlords that they were looking for the tenants. The landlords told me that, as a result of the fire, the unit was, 'unliveable'.

The next day, on 7 March, the tenants filed this application. In doing so, the tenants described their reason for applying for dispute resolution as, 'I have tried contacting landlord and arranging to pay rent. Landlord will not respond. Landlord will not accept rent for March 2023.'

Despite the bank un-freezing the tenants' account on 6 March, there is no evidence that the tenants attempted to pay the rent.

Parenthetically, the landlords testified that they believed that the name the tenants use is an alias, and that their real name is different from the name under which the tenants filed this application and entered into the tenancy agreement. The tenants affirmed they gave their legal name to the landlord.

Analysis

I have considered all the evidence proffered by the parties. And I have considered all the arguments made by the parties.

Despite the tenants' recording in their application that they wanted to pay the unpaid rent, their position at this hearing changed. Their position is now that they only owe rent from 1 to 6 March, which they say is \$255.39.

The tenants say this because the fire destroyed the unit, and so the tenancy agreement was frustrated. In other words, the agreement effectively came to an end with the fire, and so the tenants were not obliged to pay rent for the remainder of March.

This is a different issue from that which the tenants raised when they filed their application. The issue, originally, was the Notice. Now the tenants raise the issue of frustration of contract, *i.e.* the tenancy agreement.

If I find that the fire did not frustrate the tenancy agreement, then, presumably, I would address the Notice.

So, did the fire frustrate the tenancy agreement?

Section 1 of the *Residential Tenancy Act* [the 'Act'] defines 'tenancy agreement' (in part) as, 'an agreement... between a landlord and a tenant respecting possession of a rental unit...'. The key to analysing frustration in this case is 'possession'.

About ten years ago, the Supreme Court of British Columbia considered the definition of 'possession' in the context of realty [see paragraph 15 of *Yazdi Integrated Health Group Ltd. v. Unihealth Management Ltd.*, 2014 BCSC 332]. The court referenced the following definition of 'possession': '[I]nasmuch as the use of property cannot be had without possession, the term possession is frequently used as implying use and enjoyment...'

Applying these definitions (from both the Act and the Supreme Court), I rephrase the question as, 'How did the fire impact the agreement between the tenants and the landlords respecting the tenants' use and enjoyment of the unit?'

The landlords' own evidence was that, as a result of the fire, the unit was 'unliveable'. This tells me that after the fire it was impossible for the tenants to use and enjoy the unit that they had agreed to rent from the landlords.

The timing of the fire is suspicious (that is, hours after the Notice is served on the tenants). Indeed, it appears that the police found the fire suspicious, too. And the law of frustration does not permit the frustrating event to be self-induced. That is, the fire would not frustrate the contract if there were compelling evidence that the tenants set the fire themselves [see paragraph 63 of *Interfor Corporation v. Mackenzie Sawmill Ltd.*, 2020 BCSC 1572].

But other than the dubious timing of the fire, there is no evidence that the tenants set the fire. For example, I do not have a Report to Crown Counsel from police

recommending arson charges against the tenants. I do not have a report from a fire department giving an opinion of the cause of the fire. Indeed, the landlords themselves – other than pointing to the suspicious timing of the fire – (fairly) made no allegation against the tenants of starting the fire.

Is it probable that, based on the timing alone of the fire, the fire was ‘self-induced’? Without further evidence, I do not find that it is. Consider, for example, that the tenants, too, lost property in the fire: this evidence makes it less probable that the tenants set the fire.

And so I accept the frustration argument, and find that the tenancy agreement came to an end at about 1700 hours on 6 March 2023. I also accept the tenants’ argument that they owe \$255.39 for rent from 1 to 6 March.

Conclusion

I order that the tenants pay to the landlords \$255.39 for unpaid rent.

The landlords must serve this order on the tenants as soon as possible. If the tenants do not comply with my order, then the landlords may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the landlords can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 10 May 2023

Residential Tenancy Branch