

DECISION

Introduction

This hearing dealt with adjourned cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the "Act") for:

- Landlord's Application
 - A Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act.
 - Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act.
 - Authorization to recover the filing fee for this application from the tenant under section 72 of the Act.
- Tenant's Application
 - Cancel a One-Month Notice to End Tenancy for Cause (the "Notice") dated July 17, 2023.
 - A Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act.
 - An Order for access to the rental unit.
 - An Order that the Landlord comply with the Act.
 - An Order related to other issues under the Act.

Landlord Z.R. attended the hearing for the landlord.

Tenant C.J.M., Tenant OTH.D.M. attended the hearing for the tenant.

Service of Notice of Dispute Resolution Proceeding

- Based on the submissions before me, I find that Tenant C.J.M. is deemed served with the Landlord's Proceeding Package, in accordance with section 90 of the Act, on July 11, 2023. I find that Tenant C.J.M. acknowledged service and is duly served with the Proceeding Package in accordance with the Act.

- Based on the submissions before me, I find that Landlord Z.R. is deemed served with the Proceeding Package, in accordance with section 90 of the Act, on June 27, 2023. I find that Tenant Z.R. acknowledged service and is duly served with the Proceeding Package in accordance with the Act.

Service of Evidence

- Based on the submissions before me, I find that the Landlord's evidence was served to the Tenant in accordance with section 88 of the Act.
- Based on the submissions before me, I find that the Tenant's evidence was served to the Landlord in accordance with section 88 of the Act.

Preliminary Matter – Claims Amended During the Hearing

At the outset of these proceedings, the parties agreed that the tenancy ended on June 16, 2023. Additionally, the Tenant testified that they no longer want access to the rental unit.

As this tenancy ended before the date of these proceedings, and the Tenant no longer wishes to have possession of the rental unit I find that it is no longer necessary that a decision is made regarding the validity of the Notice to end tenancy or the need for an order of possession to the rental unit for this tenancy. Therefore, I am dismissing the Tenant's claim to cancel a One-Month Notice to End Tenancy for Cause, an Order for access to the rental unit, an Order that the Landlord comply with the Act, and an Order related to other issues under the Act.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act?
- Is the Landlord entitled to authorization to retain all or a portion of the Tenant's security deposit?

- Is the Landlord entitled to recover the filing fee for this application from the Tenants?
- Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement under section 67 of the Act?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The tenancy agreement recorded that this tenancy began on October 1, 2022, with a monthly rent of \$2,650.00, due on the first day of the month, with a security deposit in the amount of \$1,325.00. The Landlord provided a copy of the tenancy agreement into documentary evidence.

Both the Landlord and the Tenant agreed that the fire suppression sprinkler system was activated in the rental unit on June 16, 2023, and this activation caused a great deal of damage to the rental unit and the Tenant's personal property.

The Landlord submitted that the fire suppression sprinkler system was activated due to the Tenant striking the sprinkler head with a chair. The Landlord provided a witness statement and a fire department report into documentary evidence.

The Landlord testified that they are claiming for \$31,436.75 in compensation due to their losses associated with the June 16, 2023, incident in the rental unit, as it was the Tenant's actions that caused the fire suppression sprinkler system to activate, flooding the rental unit and causing extensive damage to the property.

The Tenant agreed that they had been moving a chair at the time when the fire suppression sprinkler system was activated but that they did not hit the sprinkler head. The Tenant also submitted that when they spoke to the Fire Pro inspector who attended the rental unit the night of the incident, they were told that there was no damage to the sprinkler head and that their actions would not have caused the activation. The Tenant submitted a fire protection report into documentary evidence.

The Tenant submitted that the fire suppression sprinkler system was activated in the rental unit due to the failure of the Landlord to perform regular maintenance. The Tenant submitted that the Landlord did not have the sprinklers inspected that the sprinkler were

20 years old and that due to age, rust, summer heat and lack of maintenance, the system was activated.

The Tenant submitted that they are claiming for \$34,748.55 in compensation due to losses associated with the June 16, 2023, incident in the rental unit as it was the Landlord's inaction in maintaining the fire suppression sprinkler system that caused the system to activate and flood the rental unit which damaged their personal property.

The Landlord testified that the fire suppression sprinkler system was inspected annually by the strata and that the system was properly maintained.

The Tenant submitted that the strata fire inspection only looks at the smoke detectors not the sprinklers.

During the hearing, the Tenant agreed that the fire pro inspector who attended the rental unit gave them the sprinkler head and that as of this date of these proceedings, they had not returned the sprinkler head to the Landlord.

The Tenant was ordered during these proceedings to return the sprinkler head to the Landlord.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

I accept the testimony of these parties that on June 16, 2023, the fire suppression sprinkler system was activated in the rental unit, causing extensive water damage that made the rental unit uninhabitable.

Before in me this case the Landlord is claiming for \$31,436.75 in compensation due to losses associated with the June 16, 2023, incident in the rental unit, and the Tenant is claiming for \$34,748.55 in compensation due to losses associated with the June 16, 2023, incident in the rental unit.

When considering a request for a monetary award for compensation due to a loss, I must consider sections 7 and 67 of the *Act*, which states that a party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or

Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To determine whether compensation is due, the arbitrator may determine whether:

- A party to the tenancy agreement has failed to comply with the Act, regulation, or tenancy agreement;
- Loss or damage has resulted from this non-compliance;
- The party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- The party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

During the hearings for these applications, these parties offered conflicting verbal testimony regarding the cause of the fire suppression sprinkler system activation on June 16, 2023. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As both the Landlord and the Tenant are applicants to these proceedings, I find that they each have the same duty to prove their respective versions of events that caused the June 16, 2023, incident in the rental unit.

The Tenant has claimed that the fire suppression sprinkler system was activated in the rental unit due to the failure of the Landlord to perform regular maintenance.

The Landlord has claimed that the fire suppression sprinkler system was activated in the rental unit due to the Tenant striking the sprinkler head with a chair.

I have reviewed all of the testimony and documentary evidence submitted by these parties and I find there is insufficient evidence before me that to show that the fire suppression sprinkler system was not properly maintained. Additionally, I also find that there is insufficient evidence before me that to show that the Tenant had caused damage to the fire suppression sprinkler system. In the absence of sufficient evidence to establish fault, I find that the doctrine of frustration applies to this tenancy.

The doctrine of frustration is a contract law doctrine that relieves the liability under a contractual agreement in the event of a breach of contract, where a party to the agreement is prevented from, or unable to, perform their obligations under the agreement, due to some event which occurs, which was outside of their sphere of control. In such circumstances, the law deems it unfair to compel the injured party to comply with the terms of the agreement, and the law relieves this person from their obligations under the contract.

The Residential Tenancy Policy Guideline #34 Frustration states the following:

“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.”

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.

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.”

In the lack of sufficient evidence to show that one of these parties was at fault, I find that this tenancy was frustrated as of June 16, 2023, and I dismiss the Landlord’s and the Tenant’s claims without leave to reapply.

As the Landlord's application has not been successful, I order the Landlord to return the security deposit for this tenancy to the Tenant.

Conclusion

I find that this tenancy was frustrated as of June 16, 2023.

I dismiss the Landlord's application without leave to reapply.

I dismiss the Tenant's application without leave to reapply.

I order the Landlord to return the \$1,325.00 security deposits they are holding for this tenancy to the Tenant within 15 days of the date of this decision.

I grant the Tenant a Monetary Order in the amount of \$1,325.00 for the return of their remaining security deposit pursuant to section 38 of the Act. 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 interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 3, 2023

Residential Tenancy Branch