



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 0927000 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's first application: OPT
Tenant's second application: ERP

Introduction

This hearing dealt with the tenant's two applications for dispute resolution for an expedited hearing seeking remedy under the Residential Tenancy Act (Act) on different issues. In the tenant's first application, the tenant applied for an order of possession of the rental unit.

In the tenant's second application, they applied for an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons.

Those listed on the cover page of this decision attended the hearing and were affirmed. Words utilizing the singular shall also include the plural and vice versa where the context requires.

In a discussion on preliminary issues, the landlord said they were not aware of the tenant's second application, as they had only received the application requesting an order of possession of the rental unit. The evidence submitted by the tenant stated they could not find any "building workers", so the papers were left on the door of a manager's unit.

When considering the service of the landlord's evidence to the tenant, the landlord's agent, JS, stated they attempted delivery of the evidence to the tenant's advocate several times; however, their office and gate were always locked. Ultimately the landlord's evidence was delivered and received, according to the advocate.

Despite any issues with service of the evidence or the tenant's application, I find that the central issue in hearing from the parties was to determine whether the tenancy has become frustrated, as claimed by the landlord.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the tenancy become frustrated?

If not, is the tenant entitled to an order of possession of the rental unit?

If not, is the tenant entitled to an order requiring the landlord to make emergency repairs to the rental unit?

Background and Evidence

The tenancy began on September 1, 2023.

To support their first application, the tenant wrote the following:

On December 27, 2023, someone broke into my unit while I was out and damaged the sprinkler system, causing a flood. When I returned to my unit, the building manager asked if I knew who broke into my unit and took my phone number. He said he would be in contact with me. I still had access to my room that night but could not sleep there. A few days later I returned and my room was boarded up. He would not pick up my calls. I still do not have access to this day.

The landlord said the date of the flooding incident was December 28, 2023.

In support of their application, the tenant testified to the following:

They did not let the intruder into their room, but someone else must have let the intruder in and they must have been in a state of delirium as they broke the sprinkler head, resulting in the flood. When they returned 2 hours later, the manager got the tenant's

phone number and they gave the landlord two different names of who the intruder might be. They left the premises for 2-3 days, because they believed their neighbours would blame them for the flood. When they returned, their rental unit was boarded up and they could not look for their belongings and have not had access to the rental unit since that time. The tenant now has confirmation who the intruder is, having seen the landlord's video. The intruder was an acquaintance who the tenant allowed to stay at Christmas time.

In response, the landlord's agents testified to the following: The landlord has notices in the building that guests must be registered with the front desk so that the landlord knows who is in the building. The landlord did not know anything about the tenant's guest staying at Christmas time as they were not registered. The tenant left their acquaintance in the room while they left, which is a breach of the rules. They are extremely concerned that the tenant knows this kind of person and allows them into the building.

At this point, they do not yet know how much damage there is and at this point, the estimate is \$30,000-\$40,000. The unit below this rental unit was destroyed and the commercial tenant on the street level suffered damage, which could include the loss of a commercial freezer.

The landlord has operated the building since 2008, and although there have been times that they could have made an insurance claim, they have not. Their insurance company has told them if they make a claim, their insurance would be dropped. The reason is that insurance is extremely hard to find due to the residential property being in a high-risk part of Vancouver, and any claim would mean they would not have insurance.

The landlord submitted a detailed written statement in response to the tenant's application. The relevant statements are reproduced in part as follows:

3) Just after 4p.m.on December 28th, 2023, the tenant's acquaintance is seen on video peeking out of room [] with a hammer in his hand, interacting with an individual in the hallway of [].

4) Soon after, water begins pouring out from under the door of [] and is quickly noticed by the manager who first knocks, then tries the door handle but the acquaintance has locked himself inside the room.

5) The [] manager runs to get the key to open the room. The key does not work as the tenant has changed the lock in violation of the Residential Tenancy Act.

- 6) The manager runs to the basement to shutdown the water and calls for the Fire Dept. In the meantime, the acquaintance exits the room wrapped in a blanket.
- 7) By the time the fire department arrives and shuts off the sprinkler, water has flooded the room, the 2nd floor, destroyed the fire panel, and flooded all the way down to the commercial unit on the ground floor, two stories down.
- 8) There is an immediate emergency call-out to the fire prevention company, to restore the sprinkler system and the fire panel. The service call is \$2,000 (attached) and the estimated cost to replace the fire panel is \$6,000 (see –attached estimate, on order). The invoice for the damages to the commercial unit has not yet been received but is believed to include electrical and cooler damage.
- 9) The tenant arrives home sometime later and enters his room. Determining that he could not stay there, he leaves and was not seen again for four days. In the meantime, the room is boarded up as both a safety and security precaution (this is standard practice on the [] when there are safety and security issues - when a room is vacant it often become the target of squatters or thieves). The tenant was given opportunities to access his room and belongings but did not show up.

[Reproduced as written except for redacting personal information]

The landlord then asserted that the tenancy has become frustrated.

Both parties, including the tenant's advocate, agreed that the rental unit in "inhospitable" (advocate's statement) or inhabitable (landlord's statement), due to the presence of black mould and other conditions as a result of the flood.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Frustration of the Contract

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.

...

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.

I accept the undisputed evidence that an acquaintance of the tenant destroyed the sprinkler head in the tenant's rental unit, causing extensive flooding not only in the rental unit, but the rental unit and commercial business below the rental unit. Both parties agree that the flooding made the rental unit uninhabitable.

I find this occurrence was not within the contemplation of the parties at the time the contract was made.

The landlord asserts that the tenant allowed their acquaintance to come onto the property and left that acquaintance unattended while the tenant was gone for several hours. The tenant denied allowing their acquaintance in their rental unit and leaving them unattended. For this reason, I find insufficient evidence of fault.

I find the rental unit becoming inhabitable is a change in circumstances that affected the nature, meaning, purpose, effect, and consequences of the contract, which is to provide the tenant a rental unit that meets health, safety, and housing standards, through no fault of the landlord.

I find the tenancy was frustrated on, and I **order** the tenancy ended December 28, 2023, the date of the flood in the rental unit.

For this reason, I dismiss the tenant's applications for an order of possession of the rental unit and for emergency repairs to be made to the rental unit, without leave to reapply.

Using my authority under section 62(1) of the Act, I order the landlord to return the rent the tenant paid for the period after the tenancy was frustrated.

Conclusion

The tenancy was deemed frustrated on December 28, 2023. The tenancy was ordered ended on that date.

The tenant's two applications were dismissed, without leave to reapply.

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: February 03, 2024

Residential Tenancy Branch