



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PLAN A REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OFL FF
Tenant: OLC DRI RR MNRT FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference.

The Landlords and the Tenant both attended the hearing. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence and Notice of Hearing packages.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is frustrated, due to the flood in the rental unit. As a result, I exercised my

discretion to dismiss, with leave to reapply, all monetary components to the Tenant's application.

Issue(s) to be Decided

- Has the Tenancy Agreement been frustrated?

Background and Evidence

There was a flood that occurred in the rental unit on or around February 23, 2024. The flood originated in another rental unit on the same floor, and affected about 12 different units in the building. The damage to this rental unit was mostly limited to the flooring, but units below also had issues with the walls and ceilings.

The Tenants explained that they are still sleeping in the rental unit, and have been all along. The Tenants stated that they have been working closely and cooperatively with the project manager from the strata insurance, to keep remediations on track. The Tenants stated that it took the Landlord a matter of hours to rip out the flooring, and for over 2 months, the Tenants have been living in the rental unit, with exposed concrete for flooring, rather than what was there before. The Tenants described this as a "minor" issue. The Tenants stated that when it comes time to put the new flooring in, they will happily vacate while the work is being done, as it shouldn't take too long given how small it is.

The Landlord stated that since this flood repair is being managed by the strata insurance, it takes much longer, and the repairs are still not even approved by strata. Once the repairs are approved, it could take over a month to do the flooring replacement, as per the Landlord's estimate. The Landlord stated that they need the Tenant to move out to complete the repairs, and they assert the tenancy agreement is frustrated.

Analysis

First, I will consider whether or not the tenancy agreement was frustrated by the flood that occurred in the rental unit. I turn to the following portion of the Act:

- 44** (1) A tenancy ends only if one or more of the following applies:
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [*tenant's notice*];
- (i.1) section 45.1 [*tenant's notice: family violence or long-term care*];
- (ii) section 46 [*landlord's notice: non-payment of rent*];
- (iii) section 47 [*landlord's notice: cause*];
- (iv) section 48 [*landlord's notice: end of employment*];
- (v) section 49 [*landlord's notice: landlord's use of property*];
- (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
- (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Next, I turn to the following portion of the Act:

92 The ***Frustrated Contract Act*** and the doctrine of frustration of contract apply to tenancy agreements.

Frustration is an English contract law doctrine that acts as a device to set aside contracts where an unforeseen event either renders contractual obligations impossible, or radically changes the party's principal purpose for entering into the contract.

If an event occurs which causes an inordinate delay in the performance of the contract, frustration may be held. However, it must be a serious delay which affects the intended purpose of the contract. I accept that there was a flood in the rental unit, which damaged about 50% of the flooring. As a result, this flooring was removed. I also note the Tenants currently live in the unit, with only exposed concrete as flooring. It appears the Tenants still largely have use of most of their rental unit, and they continue to live there without any major issue. I note the Landlord stated the tenancy was frustrated as of the date of the flood. However, I find I do not agree.

I accept that because this is a flood in a stratified building, it will take much longer to complete. However, much of this delay appears to be due to the fact that strata has yet to review and approve of any repairs before they can be started. In the meantime, the

Tenants appear to be living in the unit, without any major issue. I accept that the Tenants will likely need to vacate the unit at some point while the new flooring is being laid. However, I am not satisfied that this amount of time would be sufficiently significant such that it would frustrate the tenancy agreement. I find it more likely than not that the time needed to replace the flooring will be relatively short lived, when compared to the lifetime of the tenancy. I find the tenancy agreement has not been frustrated by the flood that occurred in February 2024.

I encourage the parties to try to work together on matters as they unfold, and as repairs are approved and started.

I award the recovery of the filing fee to the Tenant, since they were largely successful in this hearing. I authorize them to deduct \$100.00 from one future rent payment.

Conclusion

I find the tenancy agreement has not been frustrated.

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: May 13, 2024

Residential Tenancy Branch