



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT, MNSD, OFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for the return of all or part of the security deposit or pet damage deposit; and for an order that the tenancy has ended due to frustration.

The tenant and the landlord attended the hearing, and the tenant was represented by a friend of the tenant because the tenant does not speak English. The tenant's representative and the landlord each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and the evidence and testimony I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of part of rent and utilities?
- Has the tenant established a monetary claim as against the landlord for return of the security deposit?
- Has the tenant established that the tenancy has been frustrated?

Background and Evidence

The tenant's representative testified that this fixed-term tenancy began on March 12, 2023 and reverted to a month-to-month tenancy after December 31, 2023. Rent in the

amount of \$2,350.00 was payable on the 1st day of each month and there are no rental arrears to the end of July, 2024, which has been increased by \$82.25 to \$2,432.25 per month effective May 1, 2024. On March 11, 2023 the landlord collected a security deposit from the tenant in the amount of \$1,175.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment, and a copy of the tenancy agreement has been provided for this hearing.

A move-in condition inspection report was completed by the parties at the beginning of the tenancy and a copy was provided to the tenant.

The tenant's representative further testified that a flood occurred on July 26, 2024 in the middle of the night. The tenant's belongings remained there, however the tenant moved out that day. The last pieces of furniture were moved out on August 22, 2024.

The tenant has provided a Monetary Order Worksheet setting out the following claims, totalling \$1,755.00:

- \$580.00 for rent and utilities from July 26 to 31; and
- \$1,175.00 for return of the security deposit.

The claim for rent and utilities refers to daily rent from July 26 to 31, 2024 which ought to have been returned to the tenant; the rental unit was not in a livable condition and contractors had set out fans and machines, commencing on July 26, 2024. The entire building on that floor flooded. The tenant's representative is not certain if the strata sent in the contractors, however it was a huge flood. The tenant called the landlord right away when the rental unit flooded, but consistently received no response from the landlord, until August 1, 2024 when the landlord reached out asking for rent. The tenant also contacted the landlord on August 22, 2024, when the tenant returned to retrieve belongings, and the tenant kept a set of keys in order to retrieve the items. No rent was paid for August, 2024.

The tenant's forwarding address was on the Application for Dispute Resolution which was served to the landlord on August 23, 2024. The landlord has not returned the security deposit to the tenant.

The landlord testified that a few days after rent was not paid, the tenant didn't answer the landlord's calls. The landlord received a message to call the tenant's advocate.

The tenant never gave the landlord any date to end the tenancy. When the landlord spoke to the tenant's advocate, she said she wanted to keep the rental unit for storage.

There's lots of damage, some caused by the tenant, such as the range hood, but the landlord has not claimed that yet, and has not had time.

The tenancy ought to have ended by frustration on July 26, 2024 but the tenant continued to use the property until August 22, 2024, and did not tell the landlord that she had moved out. A contractor advised the landlord that the tenant vacated on August 22, 2024, but the tenant did not contact the landlord or return the landlord's phone calls. The landlord agrees that the tenancy ended on August 22, 2024, and the tenant should pay rent to that date.

Photographs have also been provided for this hearing, which the landlord testified were taken around August 20, 2024, 2 days before the tenant moved items out. Everything was still there until then.

The landlord served the tenant with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities (the Notice) by email on August 15, 2024, which was the day the tenant said she would be out initially on August 1, 2024. The tenant had until August 28, 2024 to move out. A copy of the Notice has been provided for this hearing, and it is dated August 15, 2024 and contains an effective date of vacancy of August 28, 2024. The reason for issuing it states unpaid rent in the amount of \$2,432.25 that was due on August 1, 2024.

The landlord told the tenant that the tenant had to give a forwarding address in writing and participate in a move-out condition inspection.

SUBMISSIONS OF THE TENANT'S REPRESENTATIVE:

On August 15, 2024 when the landlord sent the Notice to end tenancy, there was no agreement to serve documents by email. On August 1, 2024 there was already bad faith intent by the landlord for not returning the tenant's calls. The tenant didn't return the landlord's calls because the landlord was pestering the tenant for money that the tenant didn't owe, and the conversation was not going anywhere. The tenant did not take advantage of the landlord, but tried to find a place to live and applied for many homes, while the landlord chased the tenant for money. The tenant didn't believe the landlord would give a reference, so the tenant's representative helped the tenant before the tenant's son started school. It was a massive amount of work and effort to get the tenant's items out of the rental unit. The landlord said that the tenant had bad character for not paying rent, and said there were damages and refused to give back the security deposit, which started this claim. The landlord kept saying things about mold. The tenant had notified the landlord of a little black dot and asked if the landlord wanted to address it. The tenant bought supplies and cleaned it up. The landlord said a professional would be called in and the tenant would have to pay for it, and to not

remove it until the professional was called in. Problems were raised by the landlord so that the landlord could claim the security deposit. The move-out condition inspection report provided by the landlord is a fake document, and the landlord copied and pasted items from the move-in condition inspection report. The move-out portion has a forwarding address of the tenant and is dated October 12, 2024.

SUBMISSIONS OF THE LANDLORD:

Commercial storage is not difficult or expensive. In March, 2023 at the beginning of the tenancy the parties had an Address for Service document signed for service by email, and the landlord believes it was provided as evidence for this hearing. All of the tenant's items were still in the rental unit until August 22, 2024. For a moving company, the items left by the tenant were not a lot of items; it's a 1 bedroom unit. The landlord completed a move-out condition inspection report and copied the tenant's forwarding address on the form. The landlord agrees that the tenant was not getting what she was paying for at least for the month of August, but used the rental unit without telling the landlord when she would be vacating, and was required to return the key to the landlord right away.

Analysis

Firstly, I accept the undisputed testimony that major flooding occurred that affected the rental unit and the entire floor of the condominium building on July 26, 2024. The landlord collected a full month's rent for July, 2024, and I am satisfied that the tenant has established a claim of **\$470.76** ($\$2,432.25 / 31 \times 6 \text{ days} = \470.76). However, the tenant's Monetary Order Worksheet claims \$580.00 for rent and utilities, but the tenant has not provided any evidence of the cost of utilities, and no notations of unpaid utilities is included in the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities.

I have reviewed all of the evidence of the parties, and note that the landlord has provided a Final Opportunity to Schedule a Condition Inspection, which is digitally signed by the landlord on October 2, 2024 scheduling the move-out condition inspection report for October 12, 2024. The landlord has also provided a copy of an email dated October 2, 2024 with a copy of the Final Opportunity to Schedule a Condition Inspection. I have reviewed the tenancy agreement, which contains no permission for a landlord to serve documents by email. The landlord submitted that he had uploaded an Address for Service form, but none is included in the landlord's evidentiary material, and the tenant's representative disputes that such permission was ever given.

The landlord testified that the landlord wrote the tenant's forwarding address on the move-out condition inspection report, and the copy provided has an email address for

service the tenant, however it appears to be in the same handwriting as the forwarding address. Therefore, I am not satisfied that the tenant agreed to receive legal documents by email.

The landlord has also provided photographs with captions indicating that the tenant should forfeit the security deposit. It also contains a Summary wherein the landlord asks for compensation from the tenant, being the \$1,175.00 security deposit for extensive damages caused to the property and \$400.00 for professional cleaning fees. I have no such application from the landlord, and therefore, the claim has not been made in accordance with the *Residential Tenancy Act*. Another piece of evidence has been provided by the landlord indicating that the tenant has breached other obligations, and the landlord has suffered other losses. However that is not relevant to the application before me.

The *Residential Tenancy Act* requires a landlord to ensure that the move-in and move-out condition inspection reports are completed in accordance with the regulations, and if the landlord fails to comply, the landlord's right to claim against the security deposit for damages is extinguished. Having found that the landlord had no legal justification for serving the tenant with the Final Opportunity to Schedule a Condition Inspection by email, I find that the landlord's right to claim against the security deposit for damages is extinguished. That means that a landlord may make a claim for damages, but must return the security deposit to the tenant.

A security deposit must be returned to the tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an application claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount to the tenant.

In this case the tenant testified that the tenant's forwarding address was provided to the landlord on the Tenant's Application for Dispute Resolution on August 23, 2024. The record shows that the tenant made the application on August 23, 2024 and served the landlord by registered mail on August 25, 2024, which is deemed to have been served 5 days later, or August 30, 2024. In determining the date that the tenancy ended, I refer to Residential Tenancy Policy Guideline 34 – Frustration, which states, in part:

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.

The *Residential Tenancy Act* states:

56.1 (1) A landlord may make an application for dispute resolution requesting

(a) an order ending a tenancy because

(i) the rental unit is uninhabitable, or

(ii) the tenancy agreement is otherwise frustrated, and

(b) an order granting the landlord possession of the rental unit.

(2) If the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession.

In this case, the landlord did not make an application requesting an order ending the tenancy, even though the rental unit was clearly uninhabitable. The flooding occurred on July 26, 2024, which changed the circumstances that totally affected the nature, meaning, purpose, effect and consequences of the contract. I also find that the contract could not have been fulfilled according to its terms, even though the tenant did not have all belongings removed until August 22, 2024. Therefore, I find that the tenancy ended on July 26, 2024, and the landlord may not collect rent for August, 2024.

The landlord did not return the security deposit to the tenant, and having found that the landlord received the tenant's forwarding address in writing on August 30, 2024, and the

tenancy ended due to frustration on July 26, 2024, I find that the landlord must repay double the amount of the security deposit to the tenant, or **\$2,350.00**.

Having found that the tenant is entitled to recover \$470.76 for a portion of the rent for July, 2024 and \$2,350.00 for the security deposit, I grant a monetary order in favour of the tenant as against the landlord in the amount of **\$2,820.76**. The landlord must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$2,820.76**.

This order is final and binding and may be enforced.

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: October 31, 2024

Residential Tenancy Branch