DECISION

Dispute Codes MNDCT, OFT, FFT
MNRL-S, MNDCL, LRSD, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords which have been joined to be heard together.

The tenant has applied for a monetary order as against the landlords for money owed or compensation for damage or loss under the *Residential Tenancy Act,* regulation or tenancy agreement; an order declaring the tenancy to be a frustrated tenancy; and to recover the filing fee from the landlords for the cost of the application.

The landlords have applied for a monetary order as against the tenant for unpaid rent or utilities; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlords to keep all or part of the security deposit or pet damage deposit; and to recover the filing fee from the tenant.

The tenant and both landlords attended the hearing, and the tenant and one of the landlords gave affirmed testimony. The parties were given the opportunity to question each other. 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 applications is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use and personal damages?
- Has the tenant established that the tenancy was frustrated?

- Should the tenant recover the filing fee from the landlords?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent payments and loss of rental revenue?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Should the landlords recover the filing fee from the tenant?

Background and Evidence

The tenant testified that this fixed-term tenancy began on June 1, 2024 and was to revert to a month-to-month tenancy after May 31, 2025. However, the tenant moved out of the rental unit at the end of October, 2024. A copy of the tenancy agreement has been provided for this hearing specifying rent in the amount of $3,100.00 payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of $1,550.00, which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a condominium apartment in a strata complex; the landlords did not reside on the property during the tenancy.

The tenant further testified that no move-in or move-out condition inspection reports were completed at the beginning or end of the tenancy.

The tenant gave the landlords notice to end the tenancy on September 30, 2024 by email, with an effective date of vacancy of October 31, 2024. Prior to this hearing the parties agreed that both parties would exchange documents by email, which was initiated by the tenant before November 12, 2024 and the landlords agreed in writing. The tenant provided the landlords with a forwarding address in writing on November 12, 2024 by email.

The tenant claims $3,100.00 for damages, suffered as a result of flooding that occurred on June 14, 2024 around 5:00 or 6:00 a.m., which was just 14 days after moving in. Water went into the rental unit through the walls, and walls and floors were affected as well as the tenant's personal carpet, but did not affect any other of the tenant's personal items. The water damage incident and subsequent containment measures caused severe disruptions in the tenant's daily life. The loss of use of the rented facility for about 3 weeks significantly

impacted the tenant's well-being, peace of mind, professional life, and finances. There was a lack of clarity regarding emergency repairs and next steps; timely support and information could have greatly reduced these disruptions. Hence, the tenant is claiming compensation for loss of facility and personal damages incurred.

The tenant called the concierge to report the flooding, and tried to remove the water from the area by taking the tenant's carpet out and wiping water from the floor with a mop. The water was slowly coming in. The landlord was informed after the tenant informed the concierge, the same day.

The landlord asked the tenant to send photographs of water damage, which the tenant did. Emergency crews were on site and tried to contain it. They installed fans which ran for more than a week. It was a process which lasted 8 days. On the 17th of June, 2024 the tenant contacted the building management and copied the landlord in the same email, asking for next steps so the tenant could make temporary arrangements about where the tenant would stay. The building manager told the tenant to talk to the landlord. On the 18th the landlords replied saying they had been in touch with he insurance company and that the first step was to clean up the water. Copies of emails have been provided for this hearing.

On the 21st of June the tenant sent a formal enquires to the landlord saying that the rental unit was still unlivable. The landlord's response did not provide any clarity on what would happen next. The building manager does their part and the landlord is supposed to engage their part.

On the 25th of June, the landlord's insurance representative showed up who had a conversation with the tenant, and the tenant finally had some clarity. The representative said that it might take about a month to complete the repairs, and that the landlord had to provide approvals and necessary documents to get the repair work started. Therefore, it might take 2 months for the approval process and repair process.

The tenant engaged the tenant's insurer who also wanted documents from the building manager and the landlord. The tenant received the building manager's documents, but not the landlord's. Instead, the tenant received another document about financials for repairs, which is not what the tenant's insurance company was looking for.

On August 1, 2024 the tenant sent a follow-up email to the landlord requesting the documents, but didn't get any. The landlord told the tenant that a contractor would need to know the tenant's availability, but the tenant still didn't know when the job would start. On one hand they were being flexible, but no clear dates of when repairs were to start. The

tenant reiterated that the tenant needed the documents to give to the insurance company, and then the tenant would give dates about availability; the tenant needed a place to stay while repairs were being done. By mid-August, the parties were getting nowhere.

In early September, the tenant talked to a lawyer who referred the tenant to the Residential Tenancy Branch, about still living there, while not suitable; baseboards were still off and nails sticking out. The tenant wanted to end tenancy, and the information received from the Residential Tenancy Branch was that the tenant could apply for monetary compensation if the tenant believed there are losses, and said that the tenant could add the request to end the tenancy. The tenant sent a complaint to the landlord first, with a request for compensation and insurance documents. The tenant made the insurance claim but was not able to complete the claim because the landlords didn't provide the documentation.

The building had a history of water damage which was verbally acknowledged by 2 people: the landlord and the onsite technician who said he had a couple of other occasions of water damage. There was also a water damage incident in the same building 2 weeks later on a different floor. The tenant previous in this rental unit had apparently moved out due to water damage, and if the tenant had known that the tenant would not have moved in. When the tenant viewed the apartment, the tenant was told that the previous tenant moved out due to marriage, and a water damage issue was lightly mentioned. The tenant was not told about the history; the landlord slightly mentioned previous water damage from a washing machine, casually. Water damage can happen to anyone, but there is a difference between an accident and a chronic issue. Repeated flooding might mean structural issues. If there were no issues, it should not have been a problem getting the documents that the tenant wanted.

During the period of water damage incident, the tenant's life turned around, could not work, and could not sleep. The tenant's life was disrupted but continued to live there, and did not get any direction from the landlord or adequate support in order for the tenant to get his own insurance. There was no clarity of when work would start or how long it would take. It took till almost end of July to get some information from the landlord about when work would start.

From the beginning the tenant was dealing with a dishonest person; the rental unit wasn't cleaned at the beginning of the tenancy. The landlord said it was clean, but when the tenant showed it to the landlord's agent she said the tenant should mop. Previous rentals that the tenant has resided in have been clean, but this landlord did not take any action.

The tenant should not have to stay when the landlord is not responding, and substandard conditions existed except for the initial 13 days of the tenancy.

The loss was enormous. The tenant lost the primary contract with the University and TransLink; the tenant's work was affected by fans running constantly and humidifiers. The tenant could not stay inside for more than 3 minutes. The summer was very hot and the tenant tried his best but was not able to sleep, and repeatedly told the landlord that the rental unit was not livable. Only the restoration people said that the tenant would have to leave for about a month, and once repairs were completed the tenant could move back in.

The tenant broke the lease, but had to. The tenant's concerns to the landlord were dismissed, and due to the history, the tenant did not want to go through that again. The tenant requested the landlord's consent to end the tenancy, and the Residential Tenancy Branch said it might take a few months, but the tenant couldn't wait that long.

The tenant seeks an order that the tenancy has been frustrated, a monetary order in the equivalent of 1 month's rent of $3,100.00 and recovery of the $100.00 filing fee.

When asked why the rental unit is uninhabitable, or why the tenancy agreement is frustrated, the tenant testified that despite paying significant rent for peace of mind and comfort, the tenant had serious concerns about potential water damage due to the building's history. There was another water damage incident in the same building a few weeks after the incident, which serves as proof of the ongoing issue. This risk jeopardizes the tenant's quiet living environment and could lead to future financial damages and disruptions to the tenant's living space. These conditions are unacceptable.

The landlord testified that the landlords were told about the incident and talked to their insurance company. They asked if there was a restoration team on site. Because it is a strata, the strata is responsible for the initial restoration to ensure the building is intact. They did their assessment, and passed on the restoration to the landlord's insurance company and on June 21 they visited the site, and did the assessment on June 24. The restoration company was responsible for ensuring the rental unit dried and there was no mould buildup.

The tenant requested information by email on July 2 and on July 5 the landlords sent the documents and the tenant confirmed that he had received them.

On July 13 the landlords sent an email to the tenant saying that the contractor was available at 9:00 am. on July 14, but the tenant said he was not available but could be on

July 15 or after. An appointment was set up and the contractor was on site on July 20, who said it would take 2 to 4 days to fix it and tried to set up another appointment with the tenant to do the repairs. The parties were sending emails and text messages to schedule that. The landlords never got a response from the tenant about when he could be available for the repairs; on July 17 the landlord was ready to start repairs, but the tenant wasn't responding.

On August 6 the tenant emailed asking for the documentation for the site report plan, so the landlords sent it again. On August 7 the tenant replied that he would forward it to his insurance company, confirming it was the information he needed, but the tenant didn't provide the documents to his insurance company. The document was a work estimate, not a site plan. If the landlords didn't send the document that the tenant wanted, the tenant could have asked for it. The tenant also asked if the tenant's items should be removed. On June 26 the tenant made a claim to his insurance company and then on the 25th of July the tenant's insurance company asked again for the documents. The tenant replied to that on August 6, 2024, according to the tenant's evidentiary material.

Repairs were completely finished the day after the tenant moved out; completed on November 1, 2024.

The landlords have provided a Monetary Order Worksheet setting out the following claims totaling $6,000.00:

- $3,100.00 for October rent;
- $3,100.00 for November rent;
- $1,200.00 for 6 months reduced rent price ($200.00 per month) from Dec 2024 to May 2024;
- $100.00 for the filing fee;
- $50.00 for late payment fee;
- $-1,550.00 credit for security deposit.
- Also claiming Dec rent.

The landlord also testified that on October 1, 2024 the landlords advertised the rental unit to be re-rented, and a copy of an acknowledgement from Craigslist of the advertisement has been provided for this hearing. The rental unit has not yet been re-rented, and the landlords are going to reduce the rent further to try to find a tenant.

The landlord also testified that the parties both agreed to exchange legal documents by email.

Analysis

Firstly, the tenant seeks an order that the tenancy has ended due to frustration. The tenancy agreement is for a fixed-term starting on June 1, 2024, ending on May 31, 2025, but the tenant vacated at the end of October, 2024. The flooding event occurred 14 days after the tenant moved in.

I refer to Residential Tenancy Policy Guideline 34 – Frustration, which I find well describes "frustration," and 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.
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> 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.
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> 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 this case, the tenant seeks the order due to a flooding event, and the tenant testified that he wanted to end the tenancy due to baseboards being left off and nails sticking out, and that on June 21, 2024 the tenant advised the landlords that the rental unit was

still unlivable. The landlords replied stating that if not livable, the tenant should ask for a temporary accommodation from the tenant's insurer. The tenant's response dated June 24, 2024 states that the tenant had intended to do that, but having no documents that the tenant's insurer wanted, had not been received. It also states that the fans were pulled out on the previous Friday, which would be June 21, 2024, and the situation got better.

There is a difference between "frustration" and "a devalued" tenancy. The tenant gave notice to end the tenancy on September 30, 2024 by email effective October 31, 2024, and the event took place on June 14, 2024. If the tenant were able to remain in the rental unit from June 14 to October 31, 2024, and I accept that it was inconvenient and frustrating for the tenant, but I am not satisfied that the tenant has established that the tenancy was frustrated. I dismiss that portion of the tenant's application.

A landlord or a tenant may end a tenancy due to breach of a material term, which is a term that the parties both agree is so important that any breach of that term gives the other party the right to end the agreement. This principle is also set out in Residential Tenancy Policy Guideline 8 – Unconscionable, Unlawful, and Material Terms. It states:

> Before serving a Notice to End Tenancy for breach of a material term, the party alleging the breach must first let the other party know in writing of the alleged breach and give them a reasonable opportunity to fix the problem. The written notice of the alleged breach should inform the other party that:
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> • there is a problem;
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> • they believe the problem is a breach of a material term of the tenancy agreement;
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> • the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
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> • if the problem is not fixed by the deadline, the party will serve a notice to end the tenancy.
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> If the other party does not fix the problem by the deadline, the party alleging the breach can serve a Notice to End Tenancy for Cause for breach of a material term of the tenancy agreement.

I have reviewed all of the evidence, and I see no evidence that the tenant gave the landlords any notice of the tenant's intention to vacate if the problem was not fixed by any deadline, although I am satisfied that the tenant gave the landlord a reasonable

amount of time to correct the issue. The tenant's email dated September 19, 2024 to the landlords seeks compensation for damages and inconveniences, looking for an amicable resolution before September 26, 2024, but the email does not seek to end the tenancy. Therefore, I am not satisfied that the tenant has established that the tenancy has ended due to a breach of a material term of the tenancy agreement.

I do find, however that the tenancy has been devalued as a result of the flooding event that occurred on June 14, 2024, and the tenant seeks monetary compensation from the landlords in the equivalent of 1 month's rent. The landlord testified that the repairs were completed on November 1, 2024, which was the day after the tenant departed.

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

The tenant testified that he lost contracts as a result of the incomplete repairs, and that while fans and dehumidifiers were running constantly, the tenant could not stay inside for more than 3 minutes, and that it was a very hot summer and the tenant could not sleep. The tenant also testified that he repeatedly told the landlord that it was not livable, but described only that the baseboards had not been replaced and nails remained. The tenant's email to the landlord dated June 24, 2024 states that the fans had been removed on June 21, 2024, which was 7 days after the event, and things got better.

The tenant's claim does not include the cost of staying elsewhere and the tenant testified that none of the tenant's personal property was affected, and therefore, although the tenant made requests for information to give to his insurer, I find that the parties' emails respecting insurance is not particularly relevant. The tenant does not claim to have suffered any damage or loss as a result of receiving the wrong document from the landlord.

Similarly, the tenant testified that the building had a history of flooding, and that if the tenant had known that he would not have rented, but also testified that the landlord had mentioned a previous flood from a washing machine when the tenant first viewed the rental unit. A landlord cannot anticipate such an event, particularly in a strata complex

with multiple residential units, and therefore, I find the history of the building to be irrelevant to the application.

The tenant has also provided evidentiary material to indicate that the rental amount was overpriced. A landlord may charge whatever amount the landlord wishes, so long as the tenant agrees in writing. The tenancy agreement was signed by both parties, and I find that the tenant agreed to $3,100.00 per month in writing.

Considering the amount of time it took to complete the repairs, I find that the tenant has established that the damage or loss existed, as a result of the landlords' failure to repair and maintain the rental unit for a period of time resulting in a devaluation of the tenancy. Although the tenant was not available for one of the repair appointments the landlords attempted to set up, the tenant consistently notified the landlords of problems that continued to exist; and the tenant did what was reasonable to mitigate any damage or loss suffered.

In the circumstances, I find that the tenant has established a claim of 50% of the rent for the period of June 14 to June 21, 2024, or 8 days, for a total of **$826.64** ($3,100.00 / 30 = $103.33 x 8 = $826.64).

Considering that things got better after June 21, 2024 when drying equipment was removed, and that the repairs were not completed until after the tenant vacated, I find that the tenancy has been devalued for the period of June 22 to the end of October, 2024 by 10% of the rent payable, as follows: $310.00 / 30 = $10.33 x 9 days in June = **$93.00** + ($310.00 x 4 months, July to October = **$1,240.00)** = $1,333.00). The tenant's total compensation amounts to $2,159.64.

With respect to the landlords' claim, I have reviewed the text messages wherein the tenant had difficulties paying rent for October, 2024, and the tenant's notice to end the tenancy is effective October 31, 2024. I find that the landlords have established that the tenant failed to pay that.

The tenant testified that the tenant's notice to end the tenancy was given to the landlords by email on September 30, 2024. The regulations to the *Residential Tenancy Act* state that documents received by email are deemed to have been received 3 days after sending, which in this case would be October 3, 2024. Any notice to end a tenancy must be given, and received by the other party, before the date rent is payable under the tenancy agreement, which in this case is the 1st day of each month. The notice to end the tenancy must be effective at the end of the period, which in this case is at the end of each month. Since the landlords are deemed to have received the tenant's notice to end the tenancy on October 3, 2024, the effective date of vacancy

cannot be earlier than November 30, 2024. Therefore, I find that the landlords are entitled to recover November's rent from the tenant.

The landlords also claim $3,100.00 for December, 2024 rent. In order to be successful, the landlords must prove mitigation; that the landlords advertised the rental unit for rent at a similar or same amount of rent, starting within a reasonable time after the landlords became aware that the tenant was vacating. The landlords have provided a copy of the advertisement which is dated October 1, 2024 for $2,900.00 per month. I find that the landlords have mitigated, and the tenant is obligated to pay December's rent in the amount of $3,100.00.

The landlords also claim $1,200.00 for 6 months of a reduced rent price of $200.00 per month to the end date of the fixed term, May, 2025. It is not known when the rental unit will re-rent or the amount that it will re-rent for. Therefore, I dismiss this portion of the landlords' application, with leave to reapply.

A landlord may require a tenant to pay a late rent fee of no more than $25.00 if a term regarding that is contained in the tenancy agreement. I have reviewed the tenancy agreement which states: "Arrears, late payments and N.S.F. cheques are subject to a service charge of $50 each after the 2nd day of the month." I find the term to be unconscionable and contrary to the law, and therefore, I dismiss the landlords' claim of $50.00 for late rent.

Since both parties have been partially successful, I decline to order that either party recover the filing fee from the other party.

Having found that the tenant has established a claim of $2,159.64 and the landlords have established a claim of $9,300.00 ($3,100.00 x 3 months, October to December, 2024 inclusive), I set off those amounts. I find that the landlords are entitled to keep the $1,550.00 security deposit in partial satisfaction of the landlords' claim. I grant a monetary order in favour of the landlords for the difference of $5,590.36 ($9,300.00 - $2,159.64 - $1,550.00 Security Deposit = $5,590.36). The tenant 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, the tenant's claim for an order that the tenancy is frustrated is hereby dismissed without leave to reapply.

I hereby order the landlords to keep the $1,550.00 security deposit in partial satisfaction of the claim for unpaid rent, and I grant a monetary order in favour of the landlords as against the tenant in the amount of $5,590.36.

The landlords' application for monetary compensation from January to May, 2025 is hereby dismissed, with 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: December 11, 2024

Residential Tenancy Branch