Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a Monetary Order for unpaid rent or utilities, a Monetary Order for damage to the rental unit, a Monetary Order for money owed, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for an Order declaring that the tenancy was frustrated.

A hearing was initially convened on April 25, 2025, to consider the Tenant's Application for Dispute Resolution. That hearing was adjourned so that Application for Dispute Resolution could be considered at the same time as the Landlord's Application for Dispute Resolution.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. The participants affirmed they would not record any portion of these proceedings.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

BW stated that the Landlord's Application for Dispute Resolution and Proceeding Package was sent to NMHS, at the pre-agreed upon email address, on April 11, 2025. The Landlord submitted a copy of the tenancy agreement, in which the Tenant provided the pre-agreed upon email address. The Landlord submitted documentary evidence that shows these documents were sent in an email addressed to NMHS. I therefore find these documents were served to NMHS in accordance with section 89 of the Act.

BW stated that the Landlord's Application for Dispute Resolution and Proceeding Package was sent to JJGP, at the pre-agreed upon email address, on April 11, 2025. The Landlord submitted no documentary evidence that shows these documents were sent in an email addressed to JJGP.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure stipulates that each Respondent must be served with the Proceeding Package. When serving by email, this requires the Landlord to send one Proceeding Package addressed to JJGP and one Proceeding Package addressed to NMHS, even if they are both sent to the same email address.

I find there is insufficient evidence to conclude that the Landlord's Proceeding Package was served to JJGP, by email, because it was not sent in an email addressed to that person.

JJGP stated that the Proceeding Package was shown to them by NMHS. As the documents were shown to JJGP, I find they were sufficiently served to that party, pursuant to section 71(2)(c) of the Act.

NMHS stated that the Tenant's Application for Dispute Resolution and Proceeding Package was sent to the Landlord, at the pre-agreed upon email address, on February 20, 2025. The Tenant submitted a copy of the tenancy agreement, in which the Landlord provided the pre-agreed upon email address. The Landlord acknowledged receipt of these documents, and I find they were served to the Landlord in accordance with section 89 of the Act.

Service of Evidence

On March 18, 2025, the Landlord submitted evidence to the Residential Tenancy Branch. BW stated that this evidence was served to NMHS by email on February 20, 2025. NMHS acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On April 10, 2025, the Landlord submitted evidence to the Residential Tenancy Branch. BW stated that this evidence was served to NMHS with the Proceeding Package. NMHS acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On May 30, 2025, the Landlord submitted evidence to the Residential Tenancy Branch. BW stated that this evidence was served to NMHS by email on May 30, 2025. NMHS acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On February 17, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. NMHS stated that this evidence was served to the Landlord by email on February 20, 2025. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On March 11, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. NMHS stated that this evidence was served to the Landlord by email on March 11, 2025. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On April 11, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. NMHS stated that this evidence was served to the Landlord by email on April 11, 2025. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

On June 08, 2025, the Tenant submitted evidence to the Residential Tenancy Branch. NMHS stated that this evidence was served to the Landlord by email on June 08, 2025. The Landlord acknowledged receipt of this evidence, and it was accepted as evidence for these proceedings.

Preliminary Matter #1

The Landlord and the Tenant agree that the legal name of the Landlord appears on the Landlord's Application for Dispute Resolution. Any Monetary Order granted pursuant to these proceedings will, therefore, cite the legal name of the Landlord, as it appears on the Landlord's Application for Dispute Resolution.

Preliminary Matter #2

At the hearing NMHS stated that the Tenant had applied for a rent refund and for the return of the security deposit.

The Tenant was advised that the Tenant's Application for Dispute Resolution only declares that they are seeking an Order that the tenancy is frustrated. As such, the

parties were advised that I would not be considering an application for a rent refund or for the return of the security deposit.

Upon re-reading the details of the Tenant's application for an Order declaring the tenancy was frustrated, I recognize that the Tenant declared they were seeking "a refund of rent, damage deposit".

While I accept that the Tenant's Application for Dispute Resolution referenced a rent refund and the return of the damage deposit, I find that the Tenant's Application for Dispute Resolution did not sufficiently advise the Landlord they were seeking monetary compensation. In reaching this conclusion, I find that:

- The Tenant's Application for Dispute Resolution did not clearly declare the Tenant was applying for a Monetary Order for money owed or damage or loss, by identifying that claim on the Application for Dispute Resolution, rather than simply referencing it in the claim for an Order declaring the tenancy was frustrated
- The Tenant's Application for Dispute Resolution did not clearly declare the Tenant was applying for the return of the security deposit ,by identifying that claim on the Application for Dispute Resolution, rather than simply referencing it in the claim for an Order declaring the tenancy was frustrated
- The Tenant's Application for Dispute Resolution did not clearly declare the Tenant was applying for a rent refund, by identifying that claim on the Application for Dispute Resolution, rather than simply referencing it in the claim for an Order declaring the tenancy was frustrated
- The Tenant did not submit a Monetary Order Worksheet, which would alert the Landlord to a monetary claim.
- The Tenant did not clearly indicate a specific amount of compensation being sought in their Application for Dispute Resolution.

As the Tenant's Application for Dispute Resolution did not sufficiently advise the Landlord they were seeking monetary compensation and the return of the security deposit, I decline to consider those claims at these proceedings, pursuant to section 59(2)(b) of the Act.

To some degree, this is a moot point. As I have concluded in this decision that the security deposit shall be retained by the Landlord, that matter has been decided. The Tenant does not, therefore, has the right to file another Application for Dispute Resolution seeking the return of the security deposit.

As the Tenant did not pay rent for March or April of 2025, the Tenant does not have the right to seek a rent refund for those months.

The Tenant retains the right to file another Application for Dispute Resolution seeking compensation for loss of quiet enjoyment as a result of the fire and/or for a rent refund for rent paid prior to February 28, 2025.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?
Is the Landlord entitled to compensation for cleaning the rental unit?
Is the Landlord entitled to liquidated damages?
Is the Landlord entitled to retain all or part of the security deposit?
Is the Landlord entitled to recover the fee for filing this Application for Dispute Resolution?
Has the tenancy been frustrated?

Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began on May 15, 2024
- The parties signed a fixed term tenancy agreement, the fixed term of which ended on May 31, 2025
- The Tenant was required to pay monthly rent of $2,195.00 by the first day of each month
- The Tenant paid a security deposit of $1,097.50 on April 17, 2024
- The Tenant did not provide a forwarding address at the end of the tenancy
- There was a fire in the residential complex on February 04, 2025, which resulted in water entering the rental unit
- Water impacted the floor and the walls approximately 2” above the floor
- The Landlord told the Tenant they could remain in the unit on February 04, 2025
- On February 04, 2025, a restoration company removed the standing water and placed fans inside the unit
- The keys to the unit were returned on April 07, 2025
- No rent was paid for March or April of 2025
- On March 12, 2025, the Landlord sent the Tenant a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, via email

- The Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared the unit must be vacated by March 22, 2025.
- The Tenant did not dispute the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

BW stated that approximately 8 fans were placed in the rental unit on February 04, 2025, where they remained for 3-4 days. BW subsequently stated that some fans remained in rental units until February 13, 2025, and she is not certain when the fans were removed from unit 1407.

NMHS stated that approximately 10-12 fans were placed in the rental unit on February 04, 2025, where they remained for 10 days. NMHS stated that they did not return to the unit after February 04, 2025, until February 16, 2025, at which time the fans had been removed.

On February 06, 2025, the Tenant sent the Landlord an email in which the Tenant declared the tenancy was frustrated. On February 11, 2025, the Landlord sent the Tenant an email, in which the Landlord declared the rental unit was habitable.

The Landlord submitted an email, dated March 13, 2025, from the restoration company addressing the fire damage, in which the technician declares the rental unit (and others) were habitable on the "day of the emergency".

The Tenant submitted a report from their insurance company, dated February 07, 2025. The Tenant acknowledges that this report does not specifically declare the unit is uninhabitable. The Tenant concluded the unit was uninhabitable on the basis of the following declaration in the report:

> *Water is grossly contaminated and can contain pathogenic, toxigenic or other harmful agents and can cause significant adverse reactions to humans if contacted or consumed.*

BW stated that there was no water in the unit after February 04, 2025, so the Tenant would not have come into contact with it.

JJGP stated that they observed raw sewage in the flood water. BW stated that the unit was not contaminated with sewer water, although the fire department removed the toilet for the purposes of dispersing the water.

JJGP stated they have respiratory and other health issues that prevented them from remaining in the rental unit. BW notes that there is no documentary evidence to show the Tenant could not remain in the unit due to health issues.

The Landlord submits that residents of the residential complex were required to vacate the unit on March 05, 2025, to facilitate the restoration process, and that they were able to return to their units on March 21, 2025.

The Landlord is seeking compensation for unpaid rent for March and April of 2025. At the hearing, BW stated that the Landlord is reducing the claim for unpaid rent to reflect the fact the rental unit could not be occupied between March 05, 2025, and March 21, 2025, while repairs were being completed.

JJGP stated that:

- The Tenant moved all their personal possessions out of the rental unit on February 10, 2025
- The Tenant returned to the unit on February 16, 2025, for the purposes of viewing the condition of the rental unit.

NMHS stated that:

- The Tenant returned to the unit on March 11, 2025, for the purposes of viewing the condition of the rental unit
- The Tenant did not inform the Landlord that they had vacated the unit until the facilitated case conference on March 26, 2025
- The Tenant received the email informing them they must temporarily vacate their unit by March 05, 2025, but they did not respond to the email
- The Tenant received the email informing them they could return to unit 1408 (not 1407) on March 21, 2025, but they did not respond to the email.

BW stated that:

- On February 28, 2025, the Landlord sent an email to all tenants, informing them they must temporarily vacate their unit by March 05, 2025
- The Tenant did not respond to this email
- On March 21, 2025, the Landlord sent an email to the Tenant informing them they could return to their unit on March 21, 2025
- The Landlord mistakenly informed the Tenant they could return to unit 1408, rather than unit 1407
- The Tenant did not respond to this email

- The Tenant did not inform the Landlord that they had vacated the unit until the facilitated case conference on March 26, 2025
- No further repairs were required after March 21, 2025.

The Landlord submits that they started advertising the rental unit on several popular websites, on March 27, 2025. The Landlord submitted a list of dates the unit was posted/advertised.

BW stated that the unit was re-rented on June 01, 2025.

The Landlord is seeking liquidated damages of $400.00. Clause 6 of the tenancy agreement declares the Tenant will pay $400.00 if the Tenant ends the tenancy prematurely. BW stated that this was a pre-estimate of the costs of re-renting the unit.

NMHS submits liquidated damages are not applicable if the tenancy was frustrated.

The Landlord is seeking $220.00 for cleaning the unit. The Landlord submitted photographs, taken after the tenancy ended, which show various areas in the unit required cleaning.

NMHS stated that they do not know if the photogrpahs reflect the cleanliness of the unit at the end of the tenancy, as tradespeople were in the unit after they were last in the unit.

BW stated that employees of the Landlord spent 4-5 hours cleaning the unit and that an invoice is not available, as the unit was cleaned by employees.

NMHS stated that they have paid $100.00 to clean a larger area.

Analysis

In the partial settlement agreement of March 26, 2025, the parties mutually agreed that the tenancy ended pursuant to section 44(1)(f) of the Act. Section 44(1)(f) of the Act specifies that a tenancy ends if the director orders that the tenancy is ended.

In the partial settlement agreement, the parties also agreed that the date the tenancy ended would be determined at the proceedings that are before me.

Section 44 of the Act specifies that a tenancy may end in more than one way. I therefore find that I have authority to conclude that the tenancy ended in a manner other than section 44(1)(f) of the Act.

Based on the undisputed evidence, I find that the Tenant did not pay rent for March of 2025, and that the Landlord served the Tenant a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, by email, on March 12, 2025. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated on March 22, 2025.

Based on the undisputed evidence that the Tenant did not dispute this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant accepted that this tenancy ended on March 22, 2025, pursuant to section 46(5) of the Act.

In the absence of any evidence to show that the Tenant occupied the rental unit after March 22, 2025, I find that this tenancy ended on March 22, 2025, pursuant to section 44(1)(a)(ii) of the Act. Section 44(1)(a)(ii) of the Act specifies that a tenancy ends if the landlord gives notice to end the tenancy in accordance with section 46 of the Act.

(Residential Tenancy Branch Policy Guideline #34 reads, 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.

Based on the undisputed evidence, I find there was a fire in the residential complex on February 04, 2025, which resulted in water entering the rental unit.

Based on the email from the restoration company addressing the fire damage, dated March 13, 2025, I find that the rental unit was habitable on the “day of the emergency”. While I accept that there may have been inconveniences to the Tenant, such as fans, I

find the Tenant could have remained in the unit. Even if the fans were a significant inconvenience for the Tenant and they chose not to remain in the unit while the fans were operating, I find the inconvenience was temporary, as the fans were removed on, or before February 14, 2025.

I find NMHS' testimony that the fans remained in the unit for 10-12 days is not highly reliable, as the Tenant did not return to the unit between February 4, 2025, and February 16, 2025, so the Tenant would not have known when the fans were removed.

I find BW's testimony that the fans were removed after 3-4 days is not highly reliable, as BW was not certain when they were removed from unit 1407. I find the most reliable evidence is the email dated February 13, 2025, in which all tenants were advised that fans will be removed the next day. I therefore find it reasonable to conclude that the fans were removed from unit 1407 no later than February 14, 2025.

Based on the undisputed evidence, I find that the Tenants were required to vacate the rental unit between March 05, 2025, and March 21, 2025, to facilitate the restoration process. I find this was a temporary, albeit significant, inconvenience.

I find that the inconveniences caused by the water egress did not frustrate the tenancy. While the water and subsequent need for repairs was a significant inconvenience for both parties, the Landlord complied with their obligation to make repairs, and the rental unit was not inhabitable for any extended period. I therefore find that this tenancy did not end pursuant to section 44(1)(e) of the Act. The Tenant's application for an Order declaring the tenancy was frustrated is dismissed, without leave to reapply.

In determining the tenancy was not frustrated, I was heavily influenced by the email from the restoration company addressing the fire damage, dated March 13, 2025, in which the technician declares the rental unit (and others) were habitable on the "day of the emergency".

In determining the tenancy was not frustrated, I have placed little weight on the report from the Tenant's insurance company, dated February 07, 2025. While this insurance report clearly indicates a need for the unit to be cleaned after the flood, there is nothing in the report that indicates it was uninhabitable. People commonly remain in homes that suffer water damage, even though there is a general understanding that the damage must be repaired in a timely manner.

In determining the tenancy was not frustrated, I have placed little weight on JJGP's testimony that they observed raw sewage in the flood water. Even if there was some unclean water in the rental unit on the day of the flood, that is insufficient to refute the email from the restoration company addressing the fire damage, dated March 13, 2025, in which the technician declares the rental unit (and others) were habitable on the "day of the emergency".

In determining the tenancy was not frustrated, I have placed little weight on JJGP's testimony that they have respiratory and other health issues that prevented them from remaining in the rental unit. I find there is no evidence from a medical practitioner to support a finding that the Tenant's health prevented them from occupying the unit prior to the repairs being completed.

Section 26 of the Act requires tenants to pay rent when it is due. Based on the undisputed evidence, I find that the Tenant was still accessing the rental unit after March 01, 2025. As I have concluded that this tenancy was not frustrated, and that the tenancy did not end until March 22, 2025, I find that the Tenant was obligated to pay rent on March 01, 2025.

As the parties agree rent was not paid for March of 2025, I find the Tenant owes the Landlord some rent for March of 2025. At the hearing, BW stated that the claim for March rent could be reduced to reflect the unit could not be occupied between March 05, 2025, and March 21, 2025, while repairs were being completed. I therefore find that the Tenant was not obligated to pay rent for 17 days in March, at a per diem rate of $70.81, which is a reduction of $1,203.77. The remaining rent of $991.23 remains due for March of 2025.

Section 45(2) of the Act allows a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a)is not earlier than one month after the date the landlord receives the notice,

(b)is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c)is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 45(3) of the *Act* stipulates that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As repairs after fire were made in a reasonably efficient and timely manner, I find that the fire and resulting damage did not constitute a breach of a material term of the tenancy. I therefore find that the Tenant did not have the right to end this fixed term tenancy pursuant to section 45(3) of the *Act*.

I find that the Tenant failed to comply with section 45(2) of the *Act* when the Tenant's actions ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant may be liable for losses the Landlord experienced as a result of the Tenant vacating the unit prior to the end of the fixed term of the tenancy.

On the basis of the undisputed evidence, I find that the Tenant did not clearly inform the Landlord that they had vacated the rental unit until the facilitated case conference on March 26, 2025. I find the Landlord could not have reasonably understood the Tenant had vacated the rental unit prior to March 26, 2025, as the keys to the unit had not been returned.

Based on BW's testimony and evidence that supports it, I find the Landlord began advertising the rental unit on March 27, 2025. I find that the Landlord advertised the rental unit in a timely manner after learning, on March 26, 2025, that it had been vacated. I find this late notice greatly contributed to the Landlord's inability to find a new tenant for the rental unit until June 01, 2025. I find that Landlord would not have experienced lost revenue for April of 2025 if the tenancy had continued until the end of the fixed term of the tenancy. I therefore find that the Tenant must pay $2,195.00 to the Landlord for the loss of revenue that the Landlord experienced in April of 2025.

I find that there is a liquidated damages clause in the tenancy agreement which requires the Tenant to pay $400.00 to the Landlord if their actions prematurely end this fixed term tenancy. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement.

The amount of liquidated damages agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into. I find that $400.00 is a reasonable estimate given the expense of advertising a rental unit; the time a landlord must spend showing the rental unit and screening potential tenants; and the wear and tear that moving causes to residential property. When the amount of liquidated damages agreed upon is reasonable, a tenant must pay the stipulated sum even where the actual damages are

negligible or non-existent. Generally liquidated damage clauses will only be struck down when they are oppressive to the party having to pay the stipulated sum, which I do not find to be the case in these circumstances.

As the actions of the Tenant ended this fixed-term tenancy prematurely, and the amount of liquidated damages is reasonable, I find that the Landlord is entitled to collect liquidated damages of $400.00.

Section 37(2) of the Act states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and the tenant must return all keys or other means of accessing the unit/residential property.

To be awarded compensation for damage to the rental unit or common areas, the landlord must prove:

- the tenant has failed to comply with the Act, regulation or tenancy agreement
- loss or damage has resulted from this failure to comply
- the amount of or value of the damage or loss
- the landlord acted reasonably to minimize that damage or loss

Residential Tenancy Branch Policy Guideline 1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether the condition of premises meets reasonable health, cleanliness, and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

Based on the Landlord's photographs, I find that the Tenant breached section 37(2) of the Act when the unit was not left in reasonably clean condition. I find the dirty areas, as demonstrated by the photographs, are consistent with a unit not properly cleaned at the end of the tenancy and are not consistent with the type of dirt that is created by tradespeople.

Based on the amount of cleaning needed as demonstrated by the Landlord's photographs, I find the claim of $220.00 is reasonable compensation for 4-5 hours the employees spent cleaning. I therefore grant the claim of $220.00 for cleaning.

As NMHS submitted no evidence to support their testimony the unit could have been cleaned for less, I have placed no weight on this testimony.

I find the Application for Dispute Resolution has merit, and that the Landlord is entitled to recover the $100.00 fee for filing the Application for Dispute Resolution.

Conclusion

The Tenant's application for an Order declaring the tenancy was frustrated is dismissed, without leave to reapply.

The Landlord has established a monetary claim, in the amount of $3,906.23, which includes $3,186.23 in unpaid rent/lost revenue, $400.00 in liquidated damages, $220.00 for cleaning and $100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of $1,097.50 plus interest of $25.78, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of $2,782.95. If the Tenant does not voluntarily comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This 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: June 17, 2025

Residential Tenancy Branch