

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession because the rental unit or site is uninhabitable, or the tenancy agreement has been frustrated;
- a Monetary Order for unpaid rent under section 67 of the Act;
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

A.G. and H.N. attended the hearing for the Landlord.

M.P., M.M., and O.C. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

MP acknowledged service of the Proceeding Package. I find that she was served in accordance with the Act.

I deem SC, WS, LD, DM, and RR to have been served in accordance with the Act. In reaching this conclusion, I have considered the Landlord's documentary evidence which included registered mail tracking numbers indicating that Notices were provided to each party at their respective addresses. The Landlord explained that the mailbox for the rental building is located on the exterior of the building and has remained accessible to Tenants at all times.

Service of Evidence

Based on the submissions before me, I find that the Landlord's evidence was served to the Tenants in accordance with section 88 of the Act. In reaching this conclusion, I accept the Landlord's testimony that their documentary evidence was served in conjunction with the notices of this proceeding.

No evidence was received by the Residential Tenancy Branch from any of the Tenants.

Preliminary Matters

Withdrawal of Landlord Claims

During the hearing, the Landlord advised that they had entered into mutual agreements to end tenancy with respect to the following Tenants:

MB, SP, HT, YC, and ST

The Landlord said that as a result of these agreements, their claims had been withdrawn. The Landlord added that they had sent emails to the Tenants confirming their withdrawal and provided copies of both their emails and the mutual agreements.

Residential Tenancy Branch Rule of Procedure 5.0.1 states that a party seeking to withdraw that application must provide evidence of the other party's consent to the withdrawal.

I am satisfied from my review of the documents provided that the Landlord has established that the foregoing parties consented to the withdrawal of the Landlord's applications.

The Landlord's applications with respect to MB, SP, HT, YC, and ST are withdrawn.

Attendance

Tenants SC, WS, LD, DM, and RR did not attend the hearing. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party pursuant to rule of procedure 7.3.

I conducted the dispute resolution hearing in the absence of SC, WS, LD, DM, and RR. I decided to proceed with the hearing having already determined that each person was served with the notice of dispute resolution hearing.

Settlement of Claim with respect to MP

Under section 63 of the Act, the Arbitrator may assist the parties to settle their dispute. If the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

During the hearing, the Landlord and MP agreed to the following terms of a final and binding resolution of the Landlord's application:

1. The parties agreed that the Landlord shall have an Order of Possession dated January 3, 2025, in relation to MP's rental unit;
2. The parties agreed that the Landlord's claim for unpaid rent has been withdrawn;
3. The parties agreed that the Landlord's claim for reimbursement of their filing fee has been withdrawn;

4. Both parties agreed that these particulars comprise the full settlement of all aspects of the Landlord's current application for dispute resolution.

Issues to be Decided

Is the Landlord entitled to an Order of Possession because the rental unit or site is uninhabitable, or the tenancy agreement has been frustrated?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

Is the Landlord entitled to recover the filing fee for their applications from the Tenants?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

On March 24, 2025, the Landlord applied for dispute resolution, seeking an order of possession for multiple rental units, a monetary order for unpaid rent, and reimbursement of their filing fees.

The Landlord's undisputed evidence was that a vehicle fire occurred on January 3, 2025, causing significant damage to the rental units above and the building was evacuated.

On January 7, 2025, a structural engineer raised concerns about the integrity of the building's structural beams. On January 7, 2025, the City of Vernon wrote to the Landlord, declaring that no one may enter or occupy the building. The Landlord's insurance adjuster subsequently determined that several units had been contaminated with asbestos as a result of the fire. The Landlord provided copies of the foregoing correspondence.

Remediation work on the building is ongoing and the Landlord does not expect that occupancy will be permitted until after December 2025.

Analysis

Is the Landlord entitled to an Order of Possession because the rental unit or site is uninhabitable, or the tenancy agreement has been frustrated?

Section 56.1(2) of the Act states that if the director is satisfied that a rental unit is uninhabitable or the tenancy agreement is otherwise frustrated, the director may make an order deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and specifying the effective date of the order of possession.

Residential Tenancy Branch Policy Guideline #34 states that 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.

I find that the Landlord has established that the tenancy agreement has been frustrated as the rental units are uninhabitable. In reaching this conclusion, I have considered the letters from the structural engineer, the insurance adjuster, as well as the city of Vernon.

I deem the tenancy agreement ended on January 3, 2025, which is the date that performance of the tenancy agreement became impossible.

Therefore, I find that the Landlord is entitled to an Order of Possession with respect to the rental units belonging to SC, WS, LD, DM, and RR based on sections 56.1 of the Act.

Is the Landlord entitled to a Monetary Order for unpaid rent under section 67 of the Act?

Section 26 of the Act states that a Tenant must pay rent to the Landlord, regardless of whether the Landlord complies with the Act, regulations or tenancy agreement, unless the Tenant has a right to deduct all or a portion of rent under the Act.

The *Frustrated Contract Act* deals with the results of a frustrated contract. 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.

The Landlord's undisputed testimony was that RR and DM had failed to pay rent for January 1 and 2. The Landlord said that SC, WS, and LD had paid their rent for January.

As the tenancy agreements were frustrated on January 3, 2025, I find that the Landlord is entitled to rent for January 1 and 2.

DM's January Rent

I find that the Landlord has established entitlement to rent in the amount of \$51.61 (\$800.00 / 31 x 2).

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$51.61.

RR's January Rent

I find that the Landlord has established entitlement to rent in the amount of \$77.42 (\$1,200.00 / 31 x 2).

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid rent under section 67 of the Act, in the amount of \$77.42.

The Landlord continues to hold RR's security deposit of \$600.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain \$77.42 from RR's security deposit in satisfaction of the monetary order.

Is the Landlord entitled to recover the filing fee for their applications from the Tenants?

As the Landlord was successful in their application, I find that they are entitled to recover from SC, WS, LD, DM, and RR their \$100.00 filing fees paid for this application under section 72 of the Act.

The Landlord continues to hold RR's security deposit of \$600.00 in trust. In accordance with the off-setting provisions of section 72 of the Act, I order the Landlord to retain an additional \$100.00 from RR's security deposit in satisfaction of the monetary order.

Conclusion

In regards to their claims against SC, WS, LD, DM, and RR, I grant an Order of Possession to the Landlord **effective January 3, 2025**. Should the Tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In regards to their claim against RR, I find the Landlord is authorized to retain an \$177.42 from RR's security deposit in satisfaction of the Monetary Orders for unpaid rent and reimbursement of their filing fee.

In regards to their claim against DM, I find the Landlord is entitled to a Monetary Order for unpaid rent and reimbursement of their filing fee in the amount of \$151.61.

In regards to their claim against SC, I find the Landlord is entitled to a Monetary Order for reimbursement of their filing fee in the amount of \$100.00.

In regards to their claim against WS, I find the Landlord is entitled to a Monetary Order for reimbursement of their filing fee in the amount of \$100.00.

In regards to their claim against LD, I find the Landlord is entitled to a Monetary Order for reimbursement of their filing fee in the amount of \$100.00.

The Landlord is provided with these Orders in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed and enforced in the Provincial Court of British Columbia (Small Claims Court) if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in the Supreme Court of British Columbia.

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 3, 2025

Residential Tenancy Branch