



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and return of the security deposit.

The landlord applied requesting compensation for damage or loss under the Act, unpaid rent and to recover the filing fee from the tenant.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

Each party made a monetary claim against the other. The landlord confirmed receipt of the tenant's amended application increasing his claim to \$2,180.00; plus the tenant's evidence submissions. The tenant confirmed receipt of the landlord's application and evidence requesting compensation in the sum of \$2,503.90.

From the evidence before me it was apparent that a significant flood had occurred in the rental unit. Testimony was first taken in relation to the events that unfolded, in consideration of possible frustration of the contract.

Background and Evidence

The tenancy commenced on May 1, 2013, rent was \$1,100.00 per month, due on the 1st day of each month. A security deposit in the sum of \$550.00 was paid.

The parties agreed that in the early hours of January 11, 2014 a flood occurred, which resulted in the unit becoming uninhabitable until at least March 1, 2014. The parties agreed that the landlord was in no way responsible for the flood, which occurred after a torrential rainfall.

The tenant had to immediately vacate the unit. By the next weekend the tenant had removed his personal property.

The tenant paid rent for the month of January, 2014; no rent has been returned to the tenant and the landlord continues to hold the deposit. The tenant has applied requesting return of the rent and security deposit.

Frustration

Residential Tenancy Branch policy suggests the follow in relation to the sudden, unexpected end of a tenancy:

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 once the flood occurred in the early hours of January 11, 2014 the tenancy agreement contract was frustrated and that the parties were each relieved from their obligations under the contract. Policy refers to situations like the one that has occurred in this case.

Policy references the Frustrated Contract Act, which deals with the results of a frustrated contract. An example provided relates to a situation where rent is due in advance on the first day of each month. For example, if the tenancy were frustrated by destruction of a 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 the tenancy was frustrated. It would follow that when a rental unit floods and the tenancy is frustrated, a tenant would be entitled to return of the rent paid for the period following the flood; in this case, from January 11 to 31st, 2014.

Pursuant to section 44(e) of the Act, I find that the tenancy ended in the early hours of January 11, 2014 as the result of a flood; frustrating the tenancy agreement.

Therefore, pursuant to section 65 and 62(3) of the Act, I find that the tenant is entitled to return of rent paid in the sum of \$36.16 per day for twenty-one days following January 10, 2014, that he had paid rent. The total rent to be returned to the tenant is \$759.36.

As the landlord continues to hold the tenant's security deposit, I find, pursuant to section 62(3) of the Act, that the deposit, in the sum of \$550.00 must be returned to the tenant.

Landlord Damages Claim

The landlord stated that prior to the flood the tenant broke a gyprock door that enters the crawl space. Photographs of the broken door were supplied as evidence. The 2 X 4 frame was broken in half. The tenant said that he had no idea how this occurred and that the door appeared to have fallen from the wall, where it was installed, onto the floor. The landlord submitted that the 2 X 4's could break; I questioned how it would be possible for this to occur.

The photograph showed that the gyprock was broken along a single line, it was not smashed. The landlord said that it will cost him \$100.00 to repair the door.

The landlord said the tenant's child put a toy inside a heater, which was then rendered inoperable. This heater was not affected by the flood. No verification of this damage was supplied.

I determined, in the absence of any evidence that the tenant somehow caused the crawlspace door to fall to the ground and fall apart, that the claim for this door is dismissed. I have rejected the submission that somehow 2 X 4's could be broken in 2, without causing any significant damage to the gyprock, outside of a tear.

In the absence of any verification of the sum claimed for the heater, I find that portion of the application is dismissed.

Based on these determinations I grant the tenant a monetary Order in the sum of \$1,309.36 for return of January 2014 rent (21 days @ \$36.16/day) and the \$550.00 security deposit. This Order may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

The balance of each claim is dismissed.

The tenant acknowledged that tenant insurance may have assisted him with unforeseen costs when a circumstance like a flood occurs.

Conclusion

The tenancy ended in the early hours of January 11, 2014 as the result of frustration.

The tenant is entitled to return of rent paid from January 11 to 31st 2014.
The tenant is entitled to return of the \$550.00 security deposit.

The balance of each claim is dismissed.

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 16, 2014

Residential Tenancy Branch

