Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CITY2CITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT MNDCT RP RR

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- for an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act.*

OL ("landlord") appeared as agent on behalf of the landlord. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord's agent confirmed receipt of the tenants' application and evidence. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenants' application and evidence. The landlord did not submit any written evidence for this hearing.

Both parties confirmed in the hearing that this tenancy has ended. Accordingly, the tenants' application for repairs is cancelled.

Preliminary Issue: Adjournment of Hearing

The landlord made an application requesting an adjournment as the new management company was hired in January of 2018, and are still awaiting documentation from the previous company. The landlord's agent acknowledged receipt of the tenants' evidence

for the hearing, but the landlord requested more time to obtain and submit documentary evidence. The tenants were opposed to the application for an adjournment stating that the matter had been outstanding since August 2018, and were ready to proceed.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing".

The criteria provided for granting an adjournment, under Rule 6.4 are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1…
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing…
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

The landlord requested an adjournment in order to obtain and submit documentary evidence for the hearing. The tenants were opposed to the adjournment of the hearing as they were ready to proceed. In consideration of the fact that the tenants filed their application in August 2018 and were ready to proceed, I was not satisfied that an adjournment was justified. I found that the new management company took over in January 2018, over nine months before the hearing date. I found that both parties had ample time to prepare for the hearing, and I found that the explanation provided by the landlord did not meet the requirements of Rule 6.4, namely that an adjournment would be prejudicial to other party who was prepared to proceed with the hearing.

The request for an adjournment was not granted. The hearing proceeded.

Preliminary Issue—Amendment to Tenants' Application

The tenants submitted an updated monetary worksheet increasing the original amount of $15,509.00 to $17,304.00, but did not file an amendment to their application.

Rule 4.6 states the following:

***As soon as possible**, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each*

respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

***In any event, a copy of the amended application and supporting evidence must be received by the* by the respondent(s) not less than 14 days before the hearing.**

As the tenants' did not serve or file an amendment in accordance with RTB Rule 4.6, and the respondents have the right to review and respond to the amendment and supporting evidence, the amended monetary worksheet will not be considered as part of this application.

The tenants requested to update their monetary worksheet to reflect an additional month for the rent reduction, and remove the request for reimbursement of the July rent.

Rule 4.2 allows for an amendment application to be considered at a hearing in circumstances that can be reasonably anticipated as stated below:

4.2 Amending an application at the hearing
In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find the tenants' request to be reasonable, and accordingly, I allow the tenants' amendment request to reflect an additional month for the rent reduction, and the withdrawal of the request for reimbursement of July rent.

Issues
Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

This tenancy began in May 2011, with monthly rent set at $1,509.04. The landlord had collected a security deposit of $675.00 from the tenants, and this security deposit remains in the possession of the landlord. This tenancy ended by Mutual Agreement of both parties on September 30, 2018.

The tenants are requesting the following monetary compensation for this tenancy:

Item	**Amount**
Emotional Duress	$1,500.00
Missed time off of work	2,000.00
Time spent corresponding with parties	500.00
Rent Reduction (11 months x $1,000.00)	11,000.00
Total Monetary Order Requested	**$15,000.00**

The tenants testified that the above claims were the associated losses they incurred due to a series of events that began on October 14, 2017. The tenants provided a detailed timeline of events in their evidence, which involved flooding of their rental unit.

The tenants felt that the landlord was negligent in dealing with the matter, which resulted in a delay in obtaining alternative accommodation through their own renter's insurance. The tenants testified that due to the flood, the landlord was not able to fulfill their obligations to them for this tenancy, and they are requesting a rent reduction to reflect this.

The landlord testified that the building was built in 1994, and very old. The landlord testified that they had tried to resolve the matter by offering to end the tenancy at an earlier date, but the tenants did not accept it. The landlord testified that 3 other units were affected, and their knowledge of repair timelines were limited since the new management company took over in January of 2018.

Analysis

Section 67 of the *Act* establishes 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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

Residential Tenancy Policy Guideline 34 states the following about a Frustrated 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.

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.

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 consideration of the evidence and testimony before me, I find that this tenancy came frustrated in June of 2018, when the tenants' insurance adjuster approved the alternative accommodations for the tenants. It was undisputed by both parties that the tenants' ability to fully utilize their home was reduced since October 2017. I find that although the tenants were severely impacted by the flooding and leaks, the situation was unforeseen by both parties, and not a result of the negligent or deliberate act of either party. I find that the flooding and resulting mould prevented the landlord from fulfilling their obligations under this contract, and therefore the tenancy ended on June 1, 2018, even though this tenancy formally ended on September 30, 2018.

On that basis I find that the tenants are entitled to the return of their entire monthly rent for the period of June 1, 2018 through to September 30, 2018. As the monthly rent was set at $1,509.04, I find that the tenants are entitled to return of the monthly rent for the months of June 2018 through to September 30, 2018, less any amounts already reimbursed to the tenants. As the tenants were reimbursed for the monthly rent for the months of July through to September 2018, I order that the landlord return $1,509.04 to the tenants for the month of June 2018. If any amount remains outstanding for this period that was not reimbursed by the landlord, I order that the landlord return the tenants any rent paid for this period.

I find that the value of this tenancy was reduced from October 2017 as the tenants lost access to the use of their bedroom. I allow a reimbursement of rent in the amount of half a month's rent for the period of October 1, 2017 through to May 31, 2017, for a total reimbursement of $6,036.16 ($754.52*8).

The tenants also submitted a monetary claim for the costs associated with the time spent dealing with the flood and restoration and repairs. I find the tenants did not provide sufficient evidence to support how these losses was due to the deliberate or negligent act or omission of the landlord. I find that this tenancy ended on the basis of a frustrated tenancy on June 1, 2018, as the landlord was no longer able to provide services or facilities as agreed on for this tenancy, and not due to the landlord's failure to comply with the *Act.* On this basis, the tenants' application for monetary compensation associated with dealing with the flood and restoration and repairs is dismissed without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were partially successful in their application, I find that the tenants are entitled to half of the filing fee.

As the tenants did not file an application pertaining to their security deposit under section 38 of the *Act*, I make no order regarding this matter.

Conclusion

I issue a Monetary Order in the amount of $7,592.20 in the tenants' favour as outlined in the table below.

Item	**Amount**
Return of Rent for June 2018	$1,509.04
Rent Reduction (8 months x $754.52)	6,036.16
Half of Filing Fee	50.00
Total Monetary Order	**$7,592.20**

The tenants are provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portion of the tenants' application is dismissed without 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: November 15, 2018

Residential Tenancy Branch