



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, SS, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for damage or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Landlord confirmed that the claim for an order to serve documents in a different way, made in the current application, was made in the context of the mail strike, is no longer relevant and therefore withdraws this part of the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord states that the Tenant entered into a lease agreement on January 12, 2011 for a tenancy to start on January 15, 2011. The Landlord states that on January 16, the Tenant gave notice to the Landlord that the tenancy would not be taken up by the Tenant as the Tenant had found another unit to rent. The Landlord states that at the time of signing the lease agreement, the Tenant paid the rent for the period January 15 to January 31, 2011 and a security deposit. The Landlord states that the security deposit has since been returned to the Tenant pursuant to a previous decision. The

Landlord states that the unit was rented to another tenant for March 1, 2011 and claims lost rental income for the month of February 2011.

The Tenant states that when the unit was first offered to the Tenants, a different unit than the one they were to rent was shown to the Tenants. The Landlord confirms that the unit shown to the Tenant was the manager's unit. The Tenant states that upon relying on the assurances of the Landlord that the unit they were being offered was in the same condition as the unit seen, they agreed to sign the lease. The Landlord confirms that while the managers unit was similar in size and layout that the unit to be rented to the Tenants was not in the same condition. The Tenant states that on January 15, 2011 the Tenants attended the unit with the Landlord and found the unit to be in a deplorable condition. The Tenant states that the Landlord assured the Tenant that the unit would be ready for the 16th but when the Tenants again showed up at the unit nothing had been done and the Landlord was not able to say how long it would take before the repairs and cleaning could be completed. The Tenant states that they informed the Landlord at this point that they would not take possession of the unit and requested a return of their monies.

The Landlord confirms that the unit required some work but that this work was promised to be done by the Landlord within a few days. The Landlord states that this work, including removal of mould from windows, flooring repair or replacement and wall painting was completed by January 21 or 22, 2011.

Analysis

Based on the undisputed evidence of the Parties, I find that the unit shown to the Tenant was not the same unit provided to the Tenant under the agreement signed by the Tenant. Based on the undisputed evidence of the Parties, I find that the unit provided to the Tenant was not in the condition expected by the Tenant and that the Tenant reacted immediately to end the tenancy. Further, given the evidence of the Landlord on the condition of the unit shown to the Tenants and the extent of the repairs made to the unit following the Tenant's rejection of the unit, I find that the condition of

the unit was not in reasonable condition and was in a worse condition than the unit seen by the Tenants. I find therefore that the Landlord misrepresented the unit to be leased to the Tenant and that the Tenant is entitled to rescind the lease agreement.

As the lease agreement has been rescinded, I find that the Landlord has no basis for the claims made for lost rental income or unpaid rent and I therefore dismiss the application. As the application has been dismissed, I make no order in relation to the filing fee.

Conclusion

The Landlord's application 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: September 09, 2011.

Residential Tenancy Branch