



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order as compensation?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on October 6, 2016 and is ongoing. The tenants are obligated to pay \$1716.88 per month in rent in advance on the first of each month. The tenant testified that she rented the unit without actually seeing the finished product as this was a newly constructed complex. The tenant testified that she was shown and promised a two bedroom and a den but only received

a two bedroom suite. The tenant testified that she should be given a monetary order in the amount of \$2460.00. The tenant provided a calculation to show a reduced starting rent of \$1500.00 per month and then the subsequent increased applied to that as the base amount as opposed to the original move in rate of \$1600.00.

The landlord gave the following testimony. The landlord testified that he adamantly disputes the tenants claim and that it should be dismissed. The landlord testified that the tenant was given exactly what she was shown. The landlord testified that she was shown two other identical units and explained the unit and its amenities in great detail. The landlord testified that the tenant was given exactly what was promised and shown to her. The landlord testified that he was puzzled that the tenant waited two and half years to bring this to the Branch. The landlord testified that the tenant renewed their fixed term contract after the first year and continued on after the second year even after it became a month to month agreement.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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 provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

It was very clear that the main point of contention was whether there was a den in the suite or not. The landlord advised that the den is a very small room and was exactly as shown to the tenant when they first viewed the suites. The landlord testified that the square footage of the tenants unit is exactly as promised. The tenant felt that the den as described by the landlord is "ridiculous" because the washer, dryer and hot water tank take up the entire space. After reviewing the documentation submitted by the tenant I

find that they have not met the criteria as noted above and have not satisfied all four factors as required to obtain a monetary order; in fact, they have not met any of the four factors. The tenant did not provide sufficient evidence such as floor plans, photos or dimensions of the rooms. Based on the insufficient evidence before me, I dismiss their application in its entirety.

Conclusion

The tenants' application is dismissed in its entirety 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: January 24, 2019

Residential Tenancy Branch