



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1226 CAPITAL CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents.

As both parties were present service was represented. The parties each confirmed receipt of the respective materials. Based on the testimonies I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This fixed-term tenancy was scheduled to begin September 1, 2019 for a period of one-year. Monthly rent was to be \$1,800.00. No rent payment or deposit was provided paid to the landlord. The rental unit is a suite in a multi-unit residential building.

Shortly before the tenancy was to commence, on August 20, 2019 the parties discovered that the rental unit had mold infestation and was not in a state where it was

safe for occupation. The tenancy agreement was cancelled and the tenant found alternate accommodations.

The tenant now seeks a monetary award for expenses they say they incurred as a result of the plans to occupy the rental unit going astray.

Analysis

Residential Tenancy Policy Guideline 34 provides 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 accept the evidence of the parties that they discovered mold in the rental unit which made the suite uninhabitable. I find that this was an unforeseeable event that altered the circumstances so that it was impossible for the landlord to provide the rental unit as housing. I further find that the presence of mold is not a circumstance that arises due to the conduct of either party. I therefore find that the tenancy agreement was frustrated as the rental suite was no longer inhabitable. I find that the tenancy agreement was frustrated as of August 20, 2019 and the tenancy ended on that date.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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/loss, and that it stemmed directly from a violation of the agreement or a contravention 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. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the tenant has provided insufficient evidence in support of their monetary claim. I find that there has been no contravention on the part of the landlord from which any losses flow. The frustration of the tenancy is not attributable to a violation on the part of either party and any losses incurred are not recoverable. Consequently, I dismiss the tenant's application in its entirety.

Conclusion

The tenant's 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 27, 2020

Residential Tenancy Branch