



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for unpaid rent or utilities, to keep the Tenant's security deposit and to recover the filing fee.

An agent for the Landlord and the Tenant appeared for the hearing and no issues in relation to the service of the hearing documents, a copy of the Application and the written evidence were raised by the parties. The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Evidence and Analysis

At the start of the hearing the Tenant questioned as to why the Landlord made this Application as the Tenant had already given written consent to the Landlord to make the deductions claimed in the Application from her security deposit.

The Landlord's agent explained that the Tenant had signed a security deposit document, provided as evidence for this hearing, for the deductions to be made from her security deposit but had also signed stating that she did not agree with the deductions. Out of abundance of caution and to prevent the Landlord from incurring a potential doubling penalty, the Landlord made the Application; also the previous hearing held on January 15, 2014 did not deal with the Tenant's security deposit.

During the hearing on January 15, 2014, the arbitrator issued the Landlord with a Monetary Order for January, 2014 unpaid rent, a car parking fee and the filing fee, for a total amount of \$109.20.

The Landlord's agent testified that the Tenant was over holding the tenancy from February 1 to February 3, 2014 which was the date the move out inspection report was completed.

Therefore, the Landlord was claiming an additional \$102.77 relating to a prorated amount of rent and car parking fees for the time the Tenant was over holding.

The Tenant submitted that the Landlord had already made the deduction of the original amount awarded (\$109.20) and the prorated amount of \$102.77 from her security deposit and did not understand why the Landlord had made this Application. However, the Landlord's obligations in relation to the security deposit under section 38 of the Act were explained to the Tenant.

In addition, I further determined that, even though the Tenant had signed a document stating that she **did not** agree with the deductions being made, she also signed the same document stating that she **did** agree to the deductions. As a result, I determined that the Tenant created a confusing situation that led to this Application. After examining the security deposit statement, I find that the Tenant had given written consent, pursuant to Section 38(4) (a) of the Act, for the Landlord to make the deductions from her security deposit.

The parties submitted that the remainder of the Tenant's security deposit in the amount of \$303.03 had been returned to the Tenants and this was the end of the matter. The Landlord also agreed to withdraw her claim for the filing fee for the cost of making this Application.

Conclusion

For the above reasons, it is my finding that with the consent of both parties and pursuant to section 38(3) (a) of the Act, the Landlord was able to retain the \$109.20 previously awarded during a hearing held on January 15, 2014 from the Tenant's security deposit. In addition, with the written consent of the Tenant, the Landlord was able to retain a further \$102.77 from the Tenant's security deposit pursuant to section 38(4) (a) of the Act.

As the Landlord withdrew her Application for the filing fee, this portion of the Application is dismissed. There are no further findings to be made in this case and this file is now closed.

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 26, 2014

Residential Tenancy Branch

