



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNSD, 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. An Order of Possession - Section 55;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

It is noted that the Landlord’s application sets out details indicating a claim for damages and compensation in addition to the claims set out above. As these details are on the application itself, I find that the Landlord has sufficiently set out the particulars on these claims which are therefore considered with the dispute. The Landlord indicated that the Tenant has moved out of the unit and no longer requires an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started on April 20, 2014 for a fixed term to April 30, 2015. On July 24, 2014 the Tenant gave notice to end the tenancy for August 30, 2014. Rent of \$945.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$472.50 as a security deposit. The tenancy agreement provides for a charge of \$25.00 for NSF charges.

The Tenant's cheque for August 2014 rent was returned NSF and the Landlord claims unpaid rent of \$731.61 and an NSF charge of \$25.00.

The Tenant was given a rental incentive of \$500.00 for entering into a fixed term lease. There is no addendum or signed agreement in relation to the provision of this incentive however the Landlord provided a copy of the Tenant's ledger indicating that such an amount was credited to the Tenant at the onset of the tenancy. The tenancy agreement provides that if the Tenant was given a rental incentive this amount would be returnable to the Landlord in the event that Tenant ends the tenancy before the fixed term. The tenancy agreement also provides for liquidated damages of \$350.00 to be paid in the event the Tenant ends the tenancy before the fixed term. The Landlord states that as Tenant ended the tenancy before the fixed term date the Tenant is liable for both the repayment of a \$500.00 incentive and for \$350.00 in liquidated damages. The Landlord claims the total amount of \$850.00 for ending the fixed term early.

The Tenant did not attend the move-out inspection despite more than two offers so the Landlord completed it alone. The Tenant left the unit unclean and the Landlord claims \$90.00. No invoice was provided. The Landlord sets the amount of \$45.00 per hour for the costs to clean and that no effort has been made to determine if this hourly rate is either competitive or the best rate available. It is noted that the only areas marked as "dirty" on the move-out report are the living room and dining room floors and the bathroom. The Landlord provided illegible copies of photos.

The Landlord states that the Tenant failed to return a key to the unit and claims the costs for its replacement in the amount of \$40.00. An invoice was provided.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Given the tenancy agreement and the Landlord's evidence that rent for August 2014 was unpaid, I find that the Landlord has substantiated an entitlement to **\$731.61** in unpaid rent. Given the provision for NSF fees in the tenancy agreement and based on the undisputed evidence that the rent cheque for August was returned NSF, I find that the Landlord has also substantiated an entitlement to **\$25.00**.

Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is unconscionable. Although the Landlord claims a return of a rental incentive as provided under the tenancy agreement, as this incentive becomes payable upon a breach of the fixed term and as the liquidated damages clause also becomes payable upon the same breach, I find that the two provisions amount to a double claim for the same breach and that this is unconscionable. Further if taken together for the same breach an extravagant sum amounting to a penalty is the result. As the Landlord has claimed both amounts and in order to resolve the conflict in favour of the party who did not draft the tenancy agreement, I dismiss the claim for the return of the rental incentive but allow the claim for the liquidated damages and find the Landlord entitled to **\$350.00**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property. Based on the undisputed evidence of the Landlord and considering

the provision of the invoice for costs, I find that the Landlord has substantiated an entitlement to **\$40.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the Landlord's evidence on the move-out report, I find that only minor cleaning was left by the Tenant.

Considering however that the hourly charge set by the Landlord is unreasonably high and that the Landlord has not made any effort to find more competitive charge, I find that the Landlord failed to provide evidence of mitigation and has only substantiated a nominal amount of **\$50.00** for the cost of the minor cleaning that was left unfinished.

As the Landlord's application has met with substantial success, I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,246.61**. Deducting the security deposit of **\$472.50** plus zero interest leaves **\$774.11** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$472.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$774.11**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: October 17, 2014

