



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended. The only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served with the Landlord Application for Dispute Resolution and notice of this hearing by registered mail on October 26, 2015 and has provided a copy of a Canada Post cash register receipt bearing that date and a copy of a Registered Domestic Customer Receipt addressed to the tenant, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

At the commencement of the hearing, the landlord's agent advised that the tenant has vacated the rental unit and the landlord's application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent (hereafter referred to as the landlord) testified that this fixed-term tenancy began on November 7, 2014 and expired on November 30, 2015, thereafter reverting to a month-to-month tenancy. The tenant moved out of the rental unit sometime before November 1, 2015. Rent in the amount of \$1,160.00 per month was payable on the 1st day of each month and the landlord collected a pro-rated amount for the first calendar month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$580.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided. Also provided is a parking agreement for the rental of 2 vehicle parking spots at a cost of \$65.00 per month.

The tenant failed to pay rent when it was due for October, 2015 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 6, 2015 by posting it to the door of the rental unit. A copy has been provided and it is dated October 6, 2015 and contains an effective date of vacancy of October 19, 2015 for unpaid rent in the amount of \$1,225.00 that was due on October 1, 2015. The landlord testified that the amount includes unpaid rent for the month of October as well as rent for the parking spots.

The tenancy agreement also contains a clause wherein the tenant agreed to pay \$25.00 for late payments of rent as well as \$25.00 for fees for insufficient funds, and the landlord testified that the rent cheque for October, 2015 was returned for insufficient funds.

The landlord claims \$1,160.00 for unpaid rent, \$65.00 for unpaid parking rent, \$25.00 for a late fee, \$25.00 for an N.S.F. fee, and \$50.00 for recovery of the filing fee. The landlord seeks to keep the \$580.00 security deposit in partial satisfaction of the claim.

Analysis

I have reviewed the evidentiary material provided by the landlord, and in the absence of any evidence to the contrary, I find that the landlord has established a monetary claim as against the tenant for unpaid rent and parking rent in the amount of \$1,225.00.

I also find that the tenant agreed to late fees of rent in the amount of \$25.00, and the landlord has established that claim. However, the regulations to the *Residential Tenancy Act* specify that a landlord may claim fees for return of a tenant's rent cheque that have been charged to the landlord by the landlord's financial institution. There is no

evidence before me of that charge or that any cheque was returned for insufficient funds. Therefore, I dismiss that portion of the landlord's application.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$580.00 security deposit in partial satisfaction of the claim and I grant a monetary order in favour of the landlord as against the tenant for the difference in the amount of \$720.00 ($\$1,160.00 + \$65.00 + \$25.00 + \$50.00 = \$1,300.00 - \$580.00 = \720.00).

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the \$580.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$720.00.

This order is final and binding and may be enforced.

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: December 18, 2015

Residential Tenancy Branch

