



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 OPC, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on March 10, 2016 for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application. On March 14, 2016 the Landlord filed an Amendment wherein they adjusted their claim to confirm that the outstanding rent had been paid, and to seek compensation for damage to the rental unit.

Only the Landlord's site manager, M.S., appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

M.S. testified that both Tenants were served the Notice of Hearing and the Landlord's Application for Dispute Resolution, as well as the Amendment on March 14, 2016 by registered mail. M.S. provided the tracking numbers for both registered mailings. Under the *Residential Tenancy Act* (the "Act"), documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of March 19, 2016.

During the hearing it became apparent that some of the Landlord's evidence was not before me. M.S. testified that it had been submitted on March 14, 2016 with the Amendment and had been served on the Tenants as noted above. At the conclusion of the hearing on April 21, 2016 I asked M.S. to resubmit the documents to the Branch. M.S. complied with my request and the documents were received by me shortly thereafter and were considered by me in making this my Decision.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

M.S. confirmed that the Tenants vacated the rental unit and as such an Order of Possession was no longer required. M.S. stated that he was not sure exactly when they had left, only to say that the keys were returned and the rental unit was emptied of the Tenants' belongings as of April 4, 2016.

Issues to be Decided

1. Have the Tenants breached the Act or tenancy agreement, entitling the Landlord monetary relief?
2. What should happen with the Tenants' security deposit?
3. Is the Landlord entitled to recover of the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed September 26, 2014. M.S. also testified as to the terms of the tenancy.

The tenancy began October 1, 2014. Monthly rent was payable in the amount of \$1,180.00. A security deposit in the amount of \$590.00 was paid at the start of the tenancy.

M.S. stated that the 1 Month Notice to End for Cause was issued on February 24, 2016 with an effective date of March 31, 2016. (the "Notice"). The reasons noted on the Notice was that the Tenants were repeatedly late paying rent.

M.S. testified that the Tenant, J.T., was personally served with the Notice on February 24, 2016. Accordingly, I find that the Tenants were served with the Notice as of February 24, 2016.

The Notice explains that the Tenants had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. M.S. testified that the Tenants did not apply to dispute the Notice and accepted the Notice when they moved from the rental unit.

M.S. stated that the Tenants moved out without participating in the move out condition inspection. A copy of the Move out Condition Inspection Report dated April 4, 2016 was

provided in evidence and which confirmed damage to the rental unit as claimed by the Landlord on the Amendment.

M.S. testified that the carpet was significantly stained with what appeared to be motor oil. M.S. stated that he determined the present value of the carpet as \$1,324.00 as follows. He found the original carpet receipt from 2012 for \$2,498.00 and utilized an online depreciation calculator which he confirmed the depreciated value of the carpet. A copy of this calculation was provided in evidence. As such, the Landlord claimed \$1,324.00 as compensation for the damage to the carpet caused by the Tenants.

The Landlord also claimed that the Tenant damaged a cabinet door and two interior doors. Photos submitted in evidence confirmed the extent of the damage and the need for replacement.

The Landlord filed a Monetary Orders Worksheet wherein the following was claimed:

1.	Remainder of October 2015 late fee	\$4.00
2.	Parking for March 2016	\$24.00
3.	Remainder of December 2015 late fee	\$9.50
4.	January 2016 late and N.S.F. fee	\$49.50
5.	Unpaid portion of February 2016 late fee	\$4.50
6.	Filing fee	\$100.00
7.	Damage to rental unit flooring	\$1,324.00
8.	Replacement of broken cabinet door	\$70.00
9.	Replacement of two broken interior doors	\$100.00
10.	March 2016 N.S.F. fee	\$25.00
	TOTAL	\$1,711.50

Analysis

Based on the above, the undisputed testimony of M.S. and evidence filed, and on a balance of probabilities, I find as follows.

I find, pursuant to clause 9 of the residential tenancy agreement that the Tenant agreed to pay \$25.00 for late fees and \$25.00 for N.S.F. fees. I accept the Landlord's undisputed testimony that these fees remain outstanding and I award the Landlord compensation as claimed. I also award the Landlord compensation for unpaid parking on the basis of M.S.' testimony that the Tenant was obliged to pay this amount.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in Part 2 of the *Act* as follows:

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

The photos submitted by the Landlord clearly depict damage to the cabinet doors, interior doors and flooring. I accept these photos for the purpose for which they were submitted, as well as the undisputed testimony of M.S. that the damage was caused by the Tenants. Accordingly, I award the Landlord the amount claimed for compensation for this damage.

The Landlord, having been entirely successful, is also granted recovery of the \$100.00 filing fee.

I find that the Landlord has established a total monetary claim of \$1,711.50 as claimed on the Monetary Order Worksheet reproduced earlier in this my Decision.

Pursuant to section 38, I authorize the Landlord retain the security deposit of \$590.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$1,121.50**. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant failed to submit any evidence, and attend the hearing and the Landlord's Application proceeded as unopposed.

The Landlord is awarded the monetary compensation claimed, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due in the amount of **\$1,121.50**.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: April 21, 2016

Residential Tenancy Branch