



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, FF

Introduction

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

- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents and the male agent LW (the "landlord") primarily spoke.

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with copies of the tenant's application and evidence package and the tenant was served with the landlord's evidentiary materials.

During the hearing, the tenant made an application requesting to amend the monetary amount of the claim sought. The tenant testified that she made an arithmetic error in calculating the total amount of her claim. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as correcting an arithmetic error could be reasonably foreseen, I allow the tenant to increase the tenant's monetary claim from \$840.00 to \$990.00.

Issue(s) to be Decided

Is the tenant entitled to a monetary award equivalent to double the value of the security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This fixed term tenancy began in May, 2016 and was originally scheduled to end on April 30, 2017. A security deposit of \$495.00 was paid at the start of the tenancy. The tenancy agreement includes a Liquidated Damage clause which provides that the tenant will pay the sum of \$350.00 to the landlord if the tenant ends the fixed term tenancy. The tenant gave notice on January 27, 2017 that the tenancy would end on February 28, 2017. In accordance with the tenancy agreement, the landlord deducted the amount of \$350.00 from the security deposit and returned the remaining amount of \$145.00 to the tenant.

The tenant testified that the tenancy was frustrated as the landlord failed to properly maintain the rental unit. She said that in December, 2016 the heating system broke down and despite many calls to the landlord, adequate repairs did not occur in a timely manner. The tenant said that the landlord provided her with a space heater while they claimed repairs were being made. The tenant said that she was living in freezing conditions inside of the rental unit from December, 2016 through January, 2017. The tenant submitted into written evidence an email to the landlord dated January 27, 2017 where she said that the heating issue has not been addressed to her satisfaction.

The landlord testified that the heating system for the rental building broke down in December, 2016 and repairs were made at that time. Some of the rental units in the building continued to experience issues that were attributable to the ventilation system. The landlord said that a maintenance request was issued on December 7, 2016 when the tenant reported the issue. The landlord said that a space heater was provided to the tenant as an interim solution while the maintenance work was performed. The landlord testified that the repair work was completed in December, 2016. The landlord said that because the tenant broke the fixed term lease, liquidated damage of \$350.00 was charged. The landlord submitted into written evidence the move out inspection report of February 27, 2017 signed by the tenant as evidence that the tenant consented to the deduction of \$350.00 from the security deposit.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord must pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written permission to keep all or a portion of the security deposit as per section 38(4)(a).

I find that the tenant provided written permission to the landlord to deduct the \$350.00 liquidated damage, initially in the signed tenancy agreement, and subsequently in the move out inspection report of February 27, 2017. The move out inspection report lists the charge of \$350.00 and the report is signed by the tenant. I find this to be sufficient written permission that the landlord may deduct the amount of \$350.00 from the security deposit.

I find there to be insufficient evidence to show that the landlord failed to comply with a material term of the tenancy agreement allowing the tenant to end the fixed term tenancy on a date earlier than that specified under the tenancy agreement pursuant to section 45 of the *Act*. While I accept the evidence of the parties that there were issues with the heating system in December, 2016 I find there is insufficient evidence to show that the landlord failed to correct the situation within a reasonable period of time. The landlord submitted into written evidence maintenance request forms showing that the issue was identified and addressed. I do not find the phone logs submitted by the tenant into written evidence to be sufficient evidence that the heating was not adequately repaired. The phone logs simply show that the tenant called the landlord, I find that it is not sufficient evidence that the heating was an ongoing issue. I also note that the phone logs indicate that the tenant only called the landlord on eight separate dates between December, 2016 and January, 2017. If the heating was an ongoing, pressing issue it would be reasonable to expect more frequent communication between the parties.

In the email of January 27, 2017 the tenant makes complaints about several issues that have occurred throughout the tenancy including the heating issue. The tenant testified about numerous deficiencies with the tenancy including the doors, the parking lot, and water damage. I do not find that the complaints individually or cumulatively, resulted in the landlord's breach of a material term of the tenancy agreement. Based on the totality of the evidence I do not find there is sufficient evidence that the landlord failed to comply with the tenancy agreement allowing the tenant to end the fixed term tenancy earlier than the date specified in the agreement.

I accept the undisputed evidence of the landlord that the tenant provided written authorization to retain \$350.00 from the security deposit in the signed move out inspection report of February 27, 2017. I accept the evidence of the parties that the landlord returned the remaining portion of the security deposit of \$145.00 to the tenant within 15 days of receiving the tenant's forwarding address pursuant to section 38(1)(c) of the *Act*. Therefore, I find that the landlord has not breached section 38 of the *Act* entitling the tenant to a monetary award.

Accordingly, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

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 31, 2017

Residential Tenancy Branch