



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR MNR MNSD MND FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on September 28, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit pursuant to section 67; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord's agent (the "agent") attended the hearing and provided affirmed testimony. The tenant did not attend the hearing.

The agent testified that the tenant moved out of the rental unit at the end of August 2017. The agent further testified that the tenant provided him with a forwarding address, and the Application for Dispute Resolution, Notice of Hearing, along with supporting documentary evidence, was sent to his new address by registered mail on August 31, 2017. I find the tenant received this package on September 5, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The agent stated that he no longer requires an order of possession (the 1st ground listed above), given that the tenant moved out in August, and he requested that his application be amended to reflect this. Further, the agent stated that he does not require a monetary order for damage to the rental unit (the 4th ground listed above). In consideration of all of this information, I hereby amend the agent's application accordingly.

The agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The agent testified that the tenancy began on March 7, 2016, and rent was originally \$1,650.00. He further testified that monthly rent is now \$1,711.05, as of April 2017, and is due on the first of the month. The agent testified that the landlord currently holds a security deposit of \$825.00. The agent stated that the tenant rents a parking spot at the building at a monthly rate of \$40.00 but has failed to pay this amount for the month of August 2017. The agent also stated that the tenant has failed to pay any rent for the month of August.

The tenancy agreement provided by the landlord states that, in addition to monthly rent, the tenant agrees to pay for parking and that parking is not included in rent (term #3). The tenancy agreement further specifies (term #6) that rent was set at \$1,650.00 per month, and that there were no other fees (listed as "parking", "locker", or "other") included in the tenancy agreement.

The agent relied on the tenancy agreement which indicates that there is a late fee of \$25.00 for late/non-payment of rent. As such, the agent is requesting \$25.00 in compensation for late/unpaid August rent.

The agent provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice), which was posted to the tenant's door on August 3, 2017. At the top of the 10 Day Notice, the agent specified that the tenant owed \$1,800.10 in

rent at the time the notice was issued. The agent testified that service of the 10 Day Notice was witnessed by a third party.

During the hearing, the agent clarified that the amount noted on the 10 Day Notice (\$1,800.10) is not accurate, and stated the amount that was outstanding on August 3, 2017, consisted of the following:

- August rent - \$1,711.05
- Parking - \$40.00
- Late rent fee - \$25.00

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence from the landlord's undisputed documentary evidence and testimony before me to demonstrate that the tenant owes and has failed to pay \$1,711.05 in rent for August of 2017. Further, as specified in the tenancy agreement, I find the landlord is entitled to a late rent fee of \$25.00.

With respect to the agent's request to be compensated for unpaid parking fees for the month of August 2017, I decline jurisdiction on this matter because I find that it is a separate parallel agreement, outside of the tenancy agreement.

The agent requested that they be able to retain the security deposit of \$825.00 to offset the amount of rent owed for August, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the landlord, be kept and used to offset the amount of rent still owed by the tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Unpaid rent: August of 2017	\$1,711.05
Late rent fee	\$25.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$825.00)
TOTAL:	\$1,011.05

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,011.05** comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 28, 2017

Residential Tenancy Branch