



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Thornhill Real Estate Group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, OPC, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on January 8, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on January 16, 2018 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. It is noted that the Tenant joined the conference call at approximately 9:15 a.m. The Tenant informed the proceedings that it was unable to connect to the hearing on time despite several attempts. It was confirmed with the Tenant that the Arbitrator had similar problems connecting with the conference call as

well. The Tenant was provided with a recap of the evidence provided by the Landlord to the point of the Tenant's connection on the hearing.

The Parties confirms that the tenancy has ended and the Tenants have moved out of the unit. As a result I dismiss the Tenants' claim to dispute the notice to end tenancy as the notice is no longer relevant. As the Tenants' application has not been successful I decline to award recovery of the \$100.00 filing fee and in effect the Tenants' application is dismissed in its entirety. As the Landlord has possession of the unit I dismiss its claim for 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 November 1, 2017 and ended on March 1, 2018. Rent of \$3,200.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$3,200.00 as a security deposit. On January 1, 2018 the Tenants assigned the overpayment of their security deposit of \$1,600.00 and failed to pay the remaining \$1,600.00. On January 5, 2018 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenants disputed the Notice, paid the full rent for February 2018 and moved out of the unit.

The Landlord claims unpaid rent of \$1,600.00. The Landlord claims damages to the carpet. The Landlord claims compensation for its time in preparing and participating in the proceedings.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater

than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Section 19(2) of the Act provides that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the undisputed evidence that the Landlord collected \$1,600.00 more than allowed under the Act as a security deposit I find that the Tenants were entitled to deduct that overpayment from the rent owed for January 2018 and that \$1,600.00 remains as the allowable amount of security deposit.

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. Based on the undisputed evidence that the Tenants failed to pay **\$1,600.00** for January 2018 rent I find that the Landlord is entitled to that amount. As there is nothing in the Act that provides compensation to any party for starting and participating in the dispute resolution proceedings other than recovery of the filing fee, I dismiss the claim for the Landlord's time in participating in the proceedings. As the Landlord breached the Act at the outset of the tenancy by collecting more than allowed under the Act I decline to award the Landlord with recovery of the filing fee.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other. As the claim for damage to the unit is not related to the Landlord's application for an order of possession and unpaid rent, I dismiss this claim with leave to reapply.

Deducting the security deposit plus zero interest of **\$1,600.00** from the Landlord's entitlement of **\$1,600.00** leaves nothing owed to the Landlord by the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,600.00 in full satisfaction of the claim.

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: March 05, 2018

Residential Tenancy Branch