



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 MNDL-S, MNRL-S, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages, monetary compensation for unpaid rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant. The Landlord was affirmed to be truthful in his testimony and confirmed that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by registered mail. The registered mail receipt was submitted into evidence and the tracking number is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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

Is the Landlord entitled to monetary compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was also confirmed by the tenancy agreement included in evidence. The tenancy began on June 1, 2017 and ended on August 31, 2018. The initial monthly rent amount was \$1,200.00, due on the first day of each month, as well as a \$30.00 charge for parking. The Landlord stated that monthly rent was increased to \$1,248.00 as of June 1, 2018, plus \$30.00 for parking. A security deposit of \$600.00 was paid at the outset of the tenancy. The Landlord stated that they are still in possession of the full security deposit amount. The tenancy agreement was for a fixed term, ending on May 31, 2018.

The Landlord stated that when the Tenant was moving out, they attended the rental unit to conduct a move-out inspection. It was at this time that they noticed there had been a fire in the bathroom of the rental unit causing significant damage. The Landlord testified that the Tenant advised them that the fire had occurred the day prior and he did not have time to clean the rental unit due to the fire. The Tenant told the Landlord that the fire department had not been called.

The Landlord stated that the rental unit did not smell like smoke and the neighbours did not note see or smell any smoke the previous day. As such, the Landlord stated their belief that the fire may have occurred earlier in the tenancy.

Photos of the damage were included in the Landlord's evidence, and show burns on the bathroom floor, fire damage around the bathroom light fixture, and smoke or fire damage on the bathroom wall. The Landlord stated that the damage to the bathroom floor caused part of the floor to melt. The Landlord was not previously aware that there had been a fire in the bathroom of the Tenant's rental unit.

The Landlord submitted into evidence a move-in inspection dated June 1, 2017 which was signed by the Tenant and notes no concerns in the bathroom. A move-out inspection was submitted dated April 12, 2018 which was not signed by the Tenant and states that the bathroom was dirty and notes the presence of garbage, but no other concerns. The Landlord stated that the Tenant had provided them notice to move-out in April 2018, but later changed his mind and the tenancy continued until August 31, 2018.

A move-out inspection dated September 1, 2018 was also submitted and notes extensive fire damage in the bathroom. The move-out inspection report also notes dirty areas throughout the rest of the rental unit. The Landlord stated that the Tenant's

forwarding address was provided at the time of the move-out inspection on September 1, 2018, but that the Tenant did not sign the move-out inspection.

The Landlord has claimed a total of \$4,138.68 in compensation for damages and unpaid rent. The Landlord claimed \$260.00 for cleaning and the Landlord stated that this is the minimum cleaning charge from their cleaning contractors. He stated that many hours of cleaning were required in the rental unit. The Tenant account statement was submitted into evidence and shows the cleaning charge of \$260.00 on September 1, 2018. An invoice to the Tenant dated September 1, 2018 states a charge of \$260.00 for cleaning.

The Landlord claimed \$200.00 for repair of the bathroom walls. The Landlord stated that this included drywall, patching and painting of the bathroom wall that was damaged from the fire, as well as the ceiling around the bathroom fan where fire damage had also occurred. The account statement notes a \$50.00 wall repair charge on September 1, 2018 and a \$150.00 wall repair charge on September 19, 2018. These charges were noted on two invoices to the Tenant, one on September 1, 2018 stating a charge of \$50.00 and one on September 19, 2018 stating a charge of \$150.00.

The Landlord claimed \$593.37 for replacement of the bathroom floor. The account statement notes this charge on September 19, 2018 as does an invoice to the Tenant dated September 19, 2018. The Landlord stated that they received on quote for the floor replacement in the amount of \$593.37 and this is the company they went ahead with for completion of the repair.

The Landlord claimed \$324.25 for the cost of an electrician to repair and replace the ceiling fan and venting in the ceiling that was damaged. This amount is noted on the account statement, as well as the invoice to the Tenant, both dated September 19, 2018.

The Landlord has claimed \$700.00 for asbestos removal and the Landlord stated that this was the minimum charge required to remove asbestos from a section of the ceiling. The Landlord stated that this was required to access the burnt areas of the bathroom ceiling to complete the repairs in this area. This charge was noted on the account statement on September 19, 2018 as well as the second invoice to the Tenant on the same day.

Lastly, the Landlord has claimed for August rent, part of September 2018 rent and \$50.00 in fees due to rent payments being returned from the bank. The Landlord stated

that they deposited the pre-authorized payment from the Tenant on August 1, 2018 which was returned as non-sufficient funds (NSF). The Tenant account statement shows an amount of \$1,278.00 returned on August 7, 2018 along with a \$25.00 NSF fee. The Landlord stated that the amount was \$1,248.00 for rent along with \$30.00 for parking as stated in the tenancy agreement. The Landlord has claimed a total of \$1,303.00 for August 2018, which includes the \$25.00 NSF fee.

The Landlord stated they are seeking \$608.06 for September 2018 rent. The account statement shows the rent payment of \$1,278.00 returned on September 7, 2018 and a \$25.00 NSF fee charged by the Landlord.

The Landlord stated that they put the security deposit amount of \$600.00 towards the rent owing for September 2018, which is why they are not claiming the full amount. He testified that the Tenant provided notice to move out and they were aware that he was moving out on August 31, 2018. Further details were not provided regarding the Tenant's notice to end the tenancy or how the Landlord calculated an amount of \$608.06 owing for September 2018.

The Landlord provided testimony that they were not able to re-rent the rental unit in September 2018 due to the repairs required from the fire. As such, they experienced a loss of \$1,278.00, along with the \$25.00 late payment fee for September 2018.

Analysis

Based on the undisputed testimony and evidence of the Landlord, I find as follows:

I accept the photos submitted into evidence that show significant damage to the wall, ceiling and floor of the bathroom in the rental unit. I also accept the inspection reports that establish that the damage was caused during the tenancy. As stated in Section 32(3), a tenant is responsible for damage that is caused by their actions or the actions of a person permitted on the property by the Tenant.

The Landlord provided testimony regarding the repairs required in the rental unit and I accept the amounts requested as stated on the account ledger and the invoices to the Tenant. As stated in Section 7(1) of the *Act*, a party who does not comply with the *Act* must compensate the other party for any losses that occur.

While Section 7(2) of the *Act* states that reasonable steps must be taken by the party claiming the loss to minimize their loss, in this matter I find that it would have been difficult for the Landlord to minimize their losses due to the extent of the fire damage and repairs required. As such, I find that the Landlord has established their claim for wall repairs, bathroom floor replacement, electrical services, and asbestos removal and is awarded the full amounts claimed.

The Landlord also claimed \$260.00 for cleaning. I accept the evidence of the move-out inspection which establishes that cleaning was required throughout the rental unit. As stated in Section 37(2)(a) of the *Act*, a rental unit must be left reasonably clean and undamaged at the end of the tenancy. I award the Landlord \$260.00 for cleaning.

As for the claims for unpaid rent, I accept the evidence before me that shows that the August 2018 rent payment was returned to the Landlord as NSF. As stated in Section 26(1) of the *Act*, rent must be paid as due in the tenancy agreement and the Tenant resided in the rental unit until August 31, 2018. Therefore, I find that the Landlord is entitled to August 2018 rent in the amount of \$1,278.00, the amount of the Tenant's pre-authorized payment that was returned.

As for the NSF fee of \$25.00, as stated in Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*"), a fee of up to \$25.00 may be charged due to a bank's return of a payment. Section 7(2) of the *Regulation* states that this may only be charged if stated in the tenancy agreement. Upon review of the tenancy agreement submitted into evidence, I find that it outlines the \$25.00 fee and therefore I award this amount to the Landlord for August 2018.

As for September 2018 rent, I find it reasonable that the Landlord would be unable to re-rent the unit for September 1, 2018 due to the extent of the repairs needed in the bathroom. The account ledger confirms that the final charges regarding repairs were on September 19, 2018.

While the Landlord provided testimony that the amount of \$608.06 claimed was due to the security deposit being retained towards the full rent amount owed, the Application for Dispute Resolution states that the Landlord is claiming 14 days of rent for September 2018. However, based on the monthly rent of \$1,248.00, the daily amount would be approximately \$41.60 which equals \$582.40 for 14 days.

I am satisfied that the repairs in the rental unit took the Landlord at least 2 weeks to complete and therefore find they experienced a loss of half of the monthly rent in the amount of \$582.40. I decline to award the full amount claimed of \$608.06 as I did not find sufficient testimony or evidence to establish how this amount was calculated. I also decline to award the full September 2018 rent as I find that the application clarifies that the Landlord was seeking 14 days of rent for September 2018.

Although the Landlord charged an NSF fee for September 2018 and the account ledger notes that the Tenant's pre-authorized payment was deposited on September 1, 2018 and later returned, I do not have sufficient evidence to determine that the Landlord should have deposited the Tenant's payment for September 2018.

The Landlord stated that they were aware the Tenant was moving out on August 31, 2018 and no further details were provided about the tenancy ending or about why the Tenant's full September rent was deposited. Therefore, I decline to award the \$25.00 NSF fee or \$30.00 in parking fees to the Landlord for September 2018.

The Landlord stated they still have the security deposit to apply towards compensation owed. As the Tenant did not pay rent for August 2018, as due on August 1, 2018, while still residing in the rental unit, I find that the Landlord was entitled to retain the deposit towards the unpaid rent, pursuant to Section 38(3)(b) of the *Act*.

As the Landlord was successful in their application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 67 of the *Act*, the Landlord is granted a Monetary Order in the amount outlined below:

Cleaning	\$260.00
Bathroom wall repairs	\$200.00
Bathroom floor replacement	\$593.37
Electrical service	\$324.25
Asbestos removal	\$700.00
August 2018 rent and parking	\$1,278.00
August 2018 NSF fee	\$25.00
September 2018 rent (14 days)	\$582.40
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$600.00)</i>
Total owing to Landlord	\$3,463.02

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,463.02** for cleaning, bathroom repairs, unpaid rent and the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: January 31, 2019

Residential Tenancy Branch