



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 MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution along with the notice of hearing and all evidence (the “Materials”) by registered mail on March 15, 2019 in accordance with Section 89 of the Act and the Rules or Procedure. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on March 20, 2019. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the liquidated damages claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

The tenancy under written agreement started on November 1, 2018 for a fixed term to end October 31, 2019. Rent of \$1,850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit and \$925.00 as a pet deposit. The pet deposit has been returned. The tenancy agreement includes section 5 that sets out liquidated damages of \$925.00 payable if the Tenant ends the tenancy before the end date. The Tenant moved out of the unit on February 28, 2019, has not agreed for the Landlord to retain the security deposit in satisfaction of the liquidated damages and has not paid the liquidated damages. The Tenant provided its forwarding address on February 28, 2019. The Landlord claims \$925.00.

Analysis

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. Section 5 of the tenancy agreement provides that, inter alia, if the tenant ends the fixed term tenancy before the end of the term, the tenant will pay to the landlord the equivalent of their security deposit amount as liquidated damages. It is undisputed that the Tenant ended the tenancy before the fixed term. It is undisputed that the Tenant has not paid the liquidated damages sum to the Landlord. It is undisputed that the Tenant did not agree in writing that the Landlord could retain the security deposit to satisfy the payment of the liquidated damages. Given this undisputed evidence I find that the Landlord has substantiated an entitlement to the liquidated damages of **\$925.00**. As the Landlord has been successful with its claim I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,025.00**. Deducting the security deposit of **\$925.00** plus zero interest from the entitlement leaves **\$100.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain security deposit plus interest of \$925.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$100.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: June 20, 2019

Residential Tenancy Branch