



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 MNDL –S; MNDCL –S; MNRL –S; FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent; cleaning and garbage removal; and, authorization to retain the security deposit. The landlord was represented by an agent; however, there was no appearance on part of the tenant.

I explored service of hearing documents upon the tenant. The landlord's agent testified that the hearing documents were sent to the tenant via registered mail on April 4, 2019; however, the package was returned as unclaimed. As for the address used to send the registered mail package, the landlord used the tenant's current address of residence. The landlord's agent stated that the tenant moved to another rental unit owned by the landlord and that is how they obtained the tenant's current address.

Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. I was satisfied the landlord used the tenant's current address of residence to send the hearing package and I found the tenant to be deemed served under section 90 of the Act. As such, I proceeded to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for unpaid rent, cleaning and garbage removal in the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The tenancy started on January 1, 2016 and the landlord collected a security deposit of \$912.50. The monthly rent was set at \$1,825.00, payable on the first day of every month, and increased annually by way of Notices of Rent Increase. The most recent Notice of Rent Increase provided for a monthly rent of \$2,011.60 effective January 1, 2019.

On February 4, 2019 the tenant sent the landlord an email giving notice to end the tenancy. Keys for the rental unit were dropped off in the landlord's office on March 6, 2019; however, the keys were not accompanied by any indication as to which unit they were for. The landlord's agent had to investigate to determine which unit the keys belonged to and on March 13, 2019 the landlord's agent determined they belonged to the rental unit. On March 13, 2019 the landlord's agent entered the rental unit and found the unit had been vacated except for some abandoned property and garbage. The landlord's agent proceeded to do the move-out inspection report and take photographs.

The landlord seeks to recover the following amounts from the tenant:

1. Unpaid/loss of rent for March 2019 -- \$2,011.60

The landlord submitted that the tenant failed to give one full month of written notice to end the tenancy in February 2019 and the tenant held possession of the unit until March 6, 2019. The landlord re-rented the unit May 15, 2019. For these reasons the landlord seeks to recover from the tenant unpaid/loss of rent for March 2019 in the amount of \$2,011.60.

2. Cleaning -- \$200.00

The landlord submitted that the tenant did not leave the rental unit clean. The landlord provided photographs in support of that position along with the move-out inspection report.

3. NSF fee -- \$25.00

The landlord submitted that the tenant put a stop payment on the electronic fund transfer for the rent payment for March 2019. Clause 10 in the tenancy agreement

provides that late payment or returned payments will be subject to an administrative fee of \$25.00.

4. Garbage/junk removal -- \$180.00

The landlord submitted that the tenant left behind abandoned property and garbage that had to be removed from the unit. The landlord was charged \$180.00 to remove the tenant's abandoned possessions and garbage from the rental unit. The landlord provided photographs along with the condition inspection report and a quote in support of this claim.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

5. That the other party violated the Act, regulations, or tenancy agreement;
6. That the violation caused the party making the application to incur damages or loss as a result of the violation;
7. The value of the loss; and,
8. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the unopposed evidence before me, I provide the following findings and reasons.

Unpaid/loss of rent

The tenancy agreement provides that the tenancy was initially for a one-year fixed term that expired on December 31, 2016 and would then continue on a month to month basis. Accordingly, I find the tenant was required to give at least one full month of written notice to end the tenancy under section 45 of the Act.

The tenant gave notice via email on February 4, 2019. While email is not an acceptable method of serving notice if the landlord accepted the notice via email section 53 of the Act still applies. Section 53 provides that an effective date of a notice to end tenancy automatically changes to comply with the Act. As such, a notice to end tenancy given in

February 2019 would result in an effective end of tenancy date of March 31, 2019 in this case. Therefore, I accept the landlord's position that the tenant failed to give sufficient notice to end the tenancy at the end of February 2019 and the tenant was obligated to pay rent for March 2019.

Also of consideration is that the tenant did not return the keys to the rental unit until March 6, 2019 which implies he retained possession of the unit until that date.

Further, the landlord did not re-rent the unit in March 2019 and suffered a loss of rent for the month.

In light of all of the above, I grant the landlord's request to recover unpaid and/or loss of rent of \$2,011.60 for the month of March 2019 from the tenant.

Cleaning

Section 37 of the Act requires a tenant to leave a rental unit reasonably clean at the end of the tenancy. The landlord's photographs satisfy me that the unit was not left reasonably clean. I find the landlord's request to recover \$200.00 for cleaning to be reasonable. Therefore, I award the landlord \$200.00 for cleaning as requested.

NSF fee

For the reasons provided previously, I have found the tenant was required to pay rent for March 2019 and he failed to do so. The tenancy agreement provides in clause 10 that an administrative fee of \$25.00 may be charged where a tenant's rent payment is late and/or returned and I find the term complies with section 7 of the Residential Tenancy Regulations. Therefore, I find the landlord entitled to the NSF fee of \$25.00 claimed and I award the landlord that amount.

Garbage/junk removal

Section 37 of the Act provides that the tenant shall return vacant possession of the unit to the landlord. That includes removal of the tenant's property and garbage. The landlord's photographs satisfy me that the tenant failed to remove all of his possessions and that the possessions were of little to no value. Accordingly, I accept the landlord was in a position to dispose of the tenant's property and that cost the landlord \$180.00. Therefore, I grant the landlord's request to recover this amount from the tenant.

Filing fee

The landlord was successful in its claim against the tenant and I award the landlord recovery of the \$100.00 filing fee paid for this application.

Security deposit

Pursuant to the authority afforded me under the Act, I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

The landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid and/or loss of rent for March 2019	\$2,011.60
Cleaning	200.00
NSF fee	25.00
Garbage/junk removal	180.00
Filing fee	100.00
Less: security deposit	<u>(912.50)</u>
Monetary Order	\$1,604.10

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance owing of \$1,604.10 to serve and enforce upon the tenant.

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: June 12, 2019

Residential Tenancy Branch