



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 MND MNR MNSD FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on May 13, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage;
- a monetary order for unpaid rent;
- an order that the Landlord be permitted to apply the security deposit held to any monetary award granted; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by L.C., an agent, who provided affirmed testimony. The Tenant did not attend the hearing.

On behalf of the Landlord, L.C. testified the Application package was served on the Tenant by registered mail on May 14, 2019. A Canada Post Customer Receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Application package is deemed to have been received by the Tenant on May 19, 2019.

L.C. was provided with a full 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 and to which I was referred. 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 damage?
2. Is the Landlord entitled to a monetary order for unpaid rent?
3. Is the Landlord entitled to retain the security deposit held in partial satisfaction of the claim?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on December 1, 2018, and was expected to continue to November 30, 2019. However, according to L.C., the tenancy ended on May 6, 2019, at which time the Tenant vacated the rental unit. During the tenancy, rent in the amount of \$1,600.00 per month was due on or before the first day of each month. The Tenant paid a security deposit of \$800.00, which the Landlord holds.

The Landlord's claims are set out on a Monetary Order Worksheet, dated May 13, 2019. First, the Landlord claims \$317.43 in unpaid rent for the period from May 1-6, 2019, and \$50.00 for NSF fees, which are provided for in paragraph 10 of the tenancy agreement.

Second, the Landlord claims \$989.40 for the cost incurred to paint the rental unit. On behalf of the Landlord, L.C. testified the rental unit was freshly painted at the beginning of the tenancy. However, photographs submitted by the Landlord depict what appear to be scuff marks and children's paint on several walls in the rental unit. The Condition Inspection Report, signed by the Tenant, did not reference any issues with the walls or painting at the beginning of the tenancy. An invoice issued by the Landlord, dated May 10, 2019, was submitted in support.

Third, the Landlord claims \$260.00 for the cost incurred to clean the rental unit. Photographs submitted by the Landlord depict a dirty stove top, floors, kitchen counters, fridge, windows, walls, and bathtub. An invoice issued by the Landlord, dated May 10, 2019, was submitted in support.

Fourth, the Landlord claims \$225.00 for the cost incurred to remove garbage from the rental unit. Photographs submitted by the Landlord depict garbage piled in the kitchen and living room. L.C. also testified there was garbage left outside the rental unit, which was not depicted. An invoice issued by the Landlord, dated May 10, 2019, was submitted in support.

Fifth, the Landlord claims \$300.00 for the cost incurred to perform maintenance and repairs in the rental unit. Specifically, L.C. testified that maintenance staff took pains to remove paint and stains from the floor in an effort to avoid having to replace it. An invoice issued by the Landlord, dated May 10, 2019, was submitted in support.

Finally, the Landlord claimed \$100.00 in recovery of the filing fee, and an order permitting the Landlord to retain the security deposit held in partial satisfaction of the claim.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

After careful consideration of the evidence, I find there is sufficient evidence before me to conclude that the Tenant breached the tenancy agreement and the *Act* by:

- failing to pay rent when due, contrary to section 26 of the *Act*;
- failing to pay administration (NSF) fees, which are recoverable by the Landlord under section 7 of the *Residential Tenancy Regulation* and paragraph 10 of the tenancy agreement; and
- leaving the rental unit damaged and uncleaned, contrary to sections 32 and 37(2) of the *Act*.

Further, I find the Landlord suffered the losses claimed and that the Landlord did what was reasonable to minimize the loss (i.e. taking steps to avoid having to replace flooring). Accordingly, I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$2,141.83. In addition, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I also order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,441.83, which has been calculated as follows:

Claim	Allowed
Monetary award:	\$2,141.83
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$800.00)
TOTAL:	\$1,441.83

Conclusion

The Landlord is granted a monetary order in the amount of \$1,441.83. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: August 20, 2019

Residential Tenancy Branch