



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 FFL MNDL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$375 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The landlord's operations manager ("SG") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that SG and I were the only ones who had called into this teleconference.

SG testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on September 20, 2019. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on September 25, 2019, five days after SG mailed it, in accordance with sections 88, 89, and 90 of the Act.

SG testified that the tenant served the landlord with copies of the tenant's documentary evidence on January 7, 2020, in person.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order of \$375;
- 2) recover its filing fee from the tenant; and
- 3) retain a portion of the security deposit in satisfaction of the monetary orders sought?

Background and Evidence

While I have considered the documentary evidence of the landlord and the testimony of SG, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting July 16, 2014. The tenant vacated the rental unit on December 31, 2019. Monthly rent was \$1,381.61. The tenant paid the landlord a security deposit of \$592.50. The landlord has returned the security deposit to the tenant.

SG testified that on August 28, 2019 the tenant informed the landlord that the toilet in the rental unit was clogged (SG testified there is only one bathroom in the rental unit). SG testified that the landlord sent its onsite maintenance worker to the rental unit to try to fix the problem, but that he was unable to.

SG testified that the landlord then called a plumber to attend the rental unit to fix the problem. The plumber came to the rental unit that same day and fixed the clog. SG testified that the tenant told the plumber that her child had flushed an electric razor cover down the toilet inadvertently.

SG testified that the plumber charged \$375 to fix the issue. The landlord submitted an invoice from the plumber corroborating this amount.

SG argued that since the tenant's child caused the toilet to become clogged, the tenant should be responsible for paying for the issue to be repaired.

Analysis

1. Tenant's documentary evidence

Rule of Procedure 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the tenant failed to participate in this hearing, I find that her evidence has not been presented. As such, I decline to consider it at this hearing.

2. Is the landlord entitled to a monetary order?

Section 32(3) of the Act states:

Landlord and tenant obligations to repair and maintain

32(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the uncontroverted evidence of SG, I find that the tenant's child caused damage to the rental unit by flushing an electric razor case down the toilet which clogged the toilet. I find that the tenant did not pay the cost to unclog the toilet. This is a breach of section 32(3) of the Act.

Based on the invoice submitted by the landlord, I find that the landlord suffered a loss of \$375 as a result of this breach.

I find that the landlord acted reasonably to minimize its loss. I find that, as the rental unit only had one bathroom, that it was reasonable for the landlord to arrange for a plumber to attend the rental unit on the same day the tenant reported the toilet clog to the landlord. I find that \$375 to be a reasonable amount to pay for same-day plumbing services to unclog a toilet.

As such, I find that the tenant must pay the landlord \$375.

As the landlord has been successful in its application, I order that the tenant reimburse the landlord its filing fee (\$100).

As the landlord has returned the security deposit to the tenant, I dismiss the landlord's application to retain a portion of the security deposit in satisfaction of the monetary orders made.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$475.

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 17, 2020

Residential Tenancy Branch