



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 MNRL-S, FFL

Introduction

On July 6, 2020, the Landlord made an Application for Dispute Resolution seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”), seeking to apply the security deposit towards this debt pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

S.G. and A.Y. attended the hearing as agents for the Landlord. Neither Tenant attended at any point during the 11-minute hearing. All in attendance provided a solemn affirmation.

S.G. advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on July 8, 2020 (the registered mail tracking numbers are noted on the first page of this Decision). The tracking history indicated that these packages were delivered on July 9, 2020. Based on this undisputed evidence, and in accordance with Section 89 and 90 of the *Act*, I am satisfied that the Tenants have been served the Landlord’s Notice of Hearing and evidence packages. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

The Tenants did not submit any documentary evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

S.G. advised that the tenancy started on October 15, 2018 between the Tenants and a different property management company, but her company inherited this tenancy. She stated that the tenancy ended when the Tenants gave up vacant possession of the rental unit on June 30, 2020. Rent was established at \$1,804.00 per month and was due on the first day of each month. A security deposit of \$880.00 and a pet damage deposit of \$880.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She stated that the Tenants owed **\$781.29** as pro-rated rent at the start of the tenancy that they did not pay. During the tenancy, she advised that she contacted the Tenants about this outstanding amount and the Tenants stated that they could not pay this. She suggested a payment plan for the arrears; however, this was ignored. She referenced the rental ledger of the Tenants' payment history, that was submitted as documentary evidence, to support the Landlord's position that this amount is in arrears.

She advised that the Tenants provided their forwarding address in writing on June 30, 2020. The Landlord then mailed the Tenants' pet damage deposit of \$880.00 and the remaining security deposit of \$98.71 back to the Tenants on July 2, 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenants' forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenants, pursuant to Section 38(6) of the *Act*.

Based on the undisputed evidence before me, the Tenants provided a forwarding address to the Landlord on June 30, 2020. In addition, the consistent evidence is that the Landlord returned the pet damage deposit in full, made an Application to keep a portion of the security deposit, and returned the balance within 15 days of June 30, 2020. As the Landlord complied with the requirements of Section 38, I find that the doubling provisions of this Section do not apply in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for rental arrears of \$781.29, as there is no dispute that the Tenants owe this amount, I grant the Landlord a monetary award in the amount of **\$781.29** for the total rental arrears. Pursuant to Section 67 of the *Act*, I allow the Landlord to retain the portion of the security deposit that they have already held, in satisfaction of this debt outstanding.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: October 27, 2020

Residential Tenancy Branch