



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

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 compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. No issues were raised in relation to evidence.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on February 1, 2015 and ended on June 13, 2022. During the tenancy rent of \$885.85 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$375.00 and has not returned the deposit. The Landlord received the Tenant’s forwarding address on June 15, 2022. At move-in the Parties mutually conducted a walkthrough inspection. The Tenant has no recall of an inspection report being completed or copied to the Tenant. The Landlord has no knowledge of a move-in

inspection and the Landlord provides a copy of undetailed and unsigned move-in report. The Tenant refused to attend a move-out inspection although provided two offers. The Landlord conducted the move-out inspection alone and completed a detailed report provided as evidence for this hearing.

The Landlord claims \$145.00 as cleaning costs and the Tenant does not dispute this claim.

The Landlord states that the Tenant left garbage behind and claims \$500.00 as the costs. The Landlord did not provide an invoice although one was available for the hearing. The Landlord provides photos. The Tenant argues that the amount being claimed is excessive.

Analysis

Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Given the Tenant's evidence of no recall of the completion of a move-in inspection report and considering the Landlord's essentially blank move-in inspection report, I find on a balance of probabilities that no move-in inspection report was completed and that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-in.

Section 20(1)(f) of the Regulations provides that a condition inspection report must contain a statement of the state of repair and general condition of each room in the rental unit. As cleanliness and the presence of garbage would be indicator on the

requirements for a report, I consider that a general condition of uncleanness would be considered as included as damages to the unit and not as other compensation that would be excluded from the extinguishment provisions.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord's right to claim against the security deposit was extinguished at move-in and as the Landlord did not return the security deposit to the Tenants, I find that the Landlord must now pay the Tenants **\$750.00** as double the security deposit plus interest of **\$1.48** for a total of **\$751.48**.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean. 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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the undisputed claim of **\$145.00** for cleaning costs I find that the Landlord has substantiated an entitlement to this amount. As the Landlord did not provide an invoice to support the costs claimed I find that the Landlord has not substantiated the amount claimed. However, as the Tenant did not dispute leaving garbage in the unit I find that the Landlord has substantiated a nominal entitlement of **\$100.00** for this breach by the Tenant.

As the Landlord's claim has met with merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$345.00**. Deducting this amount from the **\$751.48** owed to the Tenant leaves **\$406.48** to be returned to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$406.48**. 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: March 15, 2023

Residential Tenancy Branch