



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FF

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 unpaid rent - 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 to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2012 for a fixed term to expire on November 30, 2013. The tenancy ended on October 31, 2013. Rent of \$995.00 was payable monthly and at the outset of the tenancy the Landlord collected a security deposit of \$497.50, a pet deposit of \$497.50 and a fob deposit of \$50.00. The tenancy agreement provides for liquidated damages of \$350.00.

The Landord states that the Tenant did not give notice to end the tenancy and claims November 2013 rent. The Landlord states that the unit was advertised on its corporate

website on October 30 or 31, 2013 for immediate occupancy and at the same rental rate. The Landlord states that the unit was rented for December 15, 2013.

The Tenant states that written notice was provided on October 1, 2013 and that this notice was delivered to a man in the office that accepted the notice and informed the Tenant that the liquidated damages amount would have to be paid before the Tenant moves out. The Tenant states that this occurred at the same time as she paid her October 2013 rent. The Landlord confirms that they received the liquidated damages from the Tenant. The Landlord states that the person who used to work in accounts receivable may have been the person the Tenant referred to in the office on October 1, 2013 but that this person was unaware of any notice at the time, no longer works for the company and this letter was not found in the Tenant's file by the Landlord.

Analysis

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 the damage or loss claimed was caused by the actions or neglect of the responding party, 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. Although the Landlord disputes that the Tenant gave a month's notice to end the tenancy, I find the Tenant's evidence that such notice was given to a previous employee to be hold a ring of truth, given the recall of details and particularly in light of the payment of the liquidated damages amount. I find therefore on a balance of probabilities that the Landlord has not shown that the Tenant failed to comply with the tenancy agreement or Act and I dismiss the Landlord's application. As the Landlord still holds the security, pet and fob deposits totalling **\$1,045.00** plus zero interest, I order the Landlord to return this amount to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$1,045.00**. 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 *Residential Tenancy Act*.

Dated: January 20, 2014

Residential Tenancy Branch

