



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent or utilities; for an order permitting the landlord to retain the security deposit in partial satisfaction of the claim; and to recover the filing fee from the tenant for the cost of this application.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents personally on June 29, 2010, the tenant did not attend the conference call hearing. An agent attended for the landlord, gave affirmed testimony and provided evidence in advance of the hearing. All information and testimony has been reviewed and is considered in this Decision.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This fixed term tenancy began on September 15, 2001 and was renewed from year to year and expires on December 31, 2010. The tenant moved from the rental unit on July 3, 2010. Rent in the amount of \$1,425.00 per month was payable in advance on the 1st day of each month at the end of the tenancy, and the tenant paid \$1,325.00 per month at the beginning of the tenancy. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$662.50.

The landlord testified that the tenant provided several rent cheques that were returned by the bank for non-sufficient funds, and provided evidence with respect to rent owed, rent paid, and late fees or N.S.F. fees charged against the tenant. The tenancy agreement states that N.S.F. fees and late fees will be charged in the amount of \$20.00, however the landlord claims that the fees were increased commencing September, 2008 to \$35.00. The balance now owed by the tenant is \$8,660.00 which includes 5 N.S.F. fees in the amount of \$35.00 each. The landlord provided a copy of an email wherein the landlord requested \$35.00 for an N.S.F. fee, and a copy of an email from the tenant agreeing to pay that amount on September 4, 2008, however no agreement has been provided wherein the parties agreed to that increase on a regular basis.

Analysis

I find that the tenancy agreement provides for late fees and N.S.F. fees in the amount of \$20.00, not for \$35.00 as claimed by the landlord.

I further find that the landlord has established a claim for unpaid rent and N.S.F. fees in the total amount of \$8,600.00. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

I order that the landlord retain the security deposit and interest of \$694.24 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$7,940.76. This order may be filed in the Provincial Court of British Columbia, Small Claims division 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: November 22, 2010.

Dispute Resolution Officer