



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD, OPR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request for an order possession based on a Notice to End Tenancy for non-payment of rent, a request for a monetary order for \$6,383.43, and a request for recovery of the \$100.00 filing fee. The applicant is also requesting an order to keep the full security deposit of \$750.00 towards the claim.

Background and Evidence

The applicants testified that:

- The tenants have moved out of the rental unit, and they now have possession of the rental unit, and therefore they no longer a request an Order of Possession.
- The tenants however still owe \$6,383.42 in outstanding rent and late fees to the end of August 2011 and therefore they are requesting an order for that outstanding amount.

- The tenants had agreed to late fees in clause 13 of the tenancy agreement that states *“The Tenant will be charged an additional amount of 5% of the Rent for any late payment of the Rent.”*
- They therefore request an order allowing them to keep the full security deposit and that a monetary order be issued for the difference.

The tenant testified that:

- She does not dispute the claim for the outstanding rent; however she feels the claim for interest charges, which exceed \$1000.00, is excessive.

Analysis

It is my finding that the landlords 5% charge for late payments of rent is an enforceable clause of the tenancy agreement, because the Residential Tenancy Act and Regulations limit late rent charges to \$25.00 per month.

Section 7 of the residential tenancy regulations states:

7 (1) A landlord may charge any of the following non-refundable fees:

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of **not more than \$25** for the return of a tenant's cheque by a financial institution **or for late payment of rent**; (my highlighting)

Therefore I will not allow the full amount claimed by the landlords for late fees.

In the 13 month term of the tenancy the tenants only paid the rent on time, on the first of the month, on one occasion, and therefore I will allow $\$25.00 \times 12 = \300.00 for late payments.

Following is a calculation of monies owed at this time:

Total rent payable for the term of the tenancy	\$18,677.00	
Total rent paid during the term of the tenancy	\$15,237.00	
	Rent outstanding at end of tenancy	\$3440.00
Plus cheques returned NSF	\$1700.00	
Plus allowable late fees	\$300.00	
Plus NSF fees	\$30.00	
	Total owed at the end of the tenancy	\$5,470.00
Plus filing fee paid for dispute resolution	\$100.00	
	Subtotal	\$5,570.00
Less security deposit	\$750.00	
	Total	\$4820.00

Conclusion

As indicated in the calculations above I order that the landlord may retain the full security deposit of \$750.00, and I have issued a monetary order in the amount of \$4820.00

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: September 27, 2011.

Residential Tenancy Branch