



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Crossroads Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes O

Introduction

This was a hearing with respect to the tenant's application filed to dispute late fees charged by the landlord beginning in June, 2014 after the landlord gave notice of a rent increase. The tenant complained that the landlord has recently increased the late fees charged. According to the tenant the landlord is currently claiming \$65.00 in late fees. The tenant wants to have them cancelled.

Issue(s) to be Decided

Is the landlord entitled to late fees claimed from the tenant?

Background and Evidence

The tenancy began in April, 2012. The rental agreement contains the following provision:

12. **ARREARS**, LATE PAYMENTS are subject to a charge against the security deposit as liquidated damages, at the rate of \$20.00 per day, minimum \$6.00. IN ADDITION, each returned cheque, including NSF, is subject to a service charge of \$25.00. These charges are subject to change, to reflect increases in costs, upon approval of the Rentalsman and changes are subject to one month's notice to the tenant. (reproduced as written)

The landlord sent a notice to the tenant and other occupants of the rental property. The Notice was titled: **LAST AND FINAL REMINDER!!** And it provided in part as follows:

As we have been posting at the beginning of each month, starting **Sept 1, 2014** new late fees will be in effect!! Should you wish to pay your rent late you will be subject to these new fees. They are as follows:

If you pay between...

2nd- 8th you will incur a \$20 late fee.

9th- 19th you will incur a \$25 late fee.

20th- 30th/31st you will incur a \$50 late fee.

The landlord's representative testified that the hearing that the tenant now owes \$90.00 in late fees. He said that the contract provision has been in place and although the clause in the tenancy agreement provides for a late fee of \$20.00 per day, the landlord has not charged a daily late fee. The landlord's representative said that it was his understanding that the landlord could give the tenant a notice to increase the amount of the late fees as provided in the tenancy agreement.

Analysis

The Residential Tenancy Regulation provides by section 7 as follows:

Non-refundable fees charged by landlord

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

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (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;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

The regulation limits the amount of late fees that may be charged by a landlord to the sum of \$25.00 for a late rent payment. The landlord is only allowed to charge the fee if the tenancy agreement provides for that fee.

I find that the landlord may not charge any amount for late fees pursuant to the Regulation and tenancy agreement in this case because the tenancy agreement called for late fees of \$20.00 per day, amounts exceeding what is allowed under the Act and although the landlord did not charge the daily fee I find that the landlord should not be able to claim an illegal fee by its tenancy agreement and then claim or demand the lesser amount from the tenant when the payment is only permitted under the Act as the enforcement of a legitimate contractual provision. I note as well that there is no provision in the *Residential Tenancy Act* or the Regulation that allows a landlord to increase its late charges by giving a notice to its tenants. The late fees set out in the landlord's notice as set out above are also illegal and therefore unenforceable.

Conclusion

I find that, pursuant to the tenancy agreement between the landlord and the tenant, the landlord is not entitled to charge the tenant any amount for late fees. The tenant is not obliged to pay the amount claimed by the landlord and the landlord may not claim late fees from the tenant in the future.

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: March 02, 2015

Residential Tenancy Branch

