



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amacon Property Management Services Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OLC, RP

Introduction

This was a hearing with respect to an application by the tenant to cancel a 10 day Notice to End Tenancy for unpaid rent and for other relief, including a refund of late fees charged by the landlord. The hearing was conducted by conference call. The tenant called in together with Mr. D. H. The landlord's representative called in and participated in the hearing

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 2, 2015 be cancelled?
Is the tenant entitled to any other relief, including a refund of late fees?

Background and Evidence

The rental unit is an apartment in Maple Ridge. The tenancy began on January 31, 2015. The monthly rent is \$850.00. The tenant paid a portion of the security deposit at the start of the tenancy. She paid \$212.50. There was a dispute as to the payment of the balance of the security deposit. Mr. D. H., who occupies the unit with the tenant said that he paid the balance of the security deposit in cash. The landlord's representative testified that there was still \$212.50 of the \$425.00 security deposit unpaid. The landlord's representative said that the Notice to End Tenancy was given because the tenant currently owes \$212.50. The tenant submitted confirmations from the Ministry of Social Development that the rent cheques submitted on her behalf had been cashed.

The tenant testified that she was charged \$75.00 for a late rent payment, but in fact the landlord was paid \$80.00 for the late charge. I was not provided with a copy of the tenancy agreement, but the landlord's representative testified that the agreement provides for a late payment charge of \$75.00 for each late rent payment. She testified

that she was unaware that the *Residential Tenancy Act* and Regulations limits the fee that can be charged for a late rent payment to a maximum amount of \$25.00.

Analysis

The landlord did not submit any documentary evidence, such as a ledger to show what amount, if any is owed for rent. Based on the testimony at the hearing it appears that the amount claimed to be outstanding may be in respect of a security deposit and not rent. The tenant has applied to cancel the Notice to End Tenancy for unpaid rent. The landlord has not provided evidence to show that there is any rent outstanding. I therefore order that the Notice to End Tenancy dated September 2, 2015 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

With respect to the matter of late fee charges, 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 a late fee charge of \$75.00, an amount exceeding what is allowed under the Act. 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 find that the tenant is entitled to recover the sum of \$80.00 paid as a late fee and she may deduct the sum of \$80.00 from a future installment of rent paid to the landlord so as to satisfy this award.

The tenant and the landlord's representative have agreed to meet to determine and settle whether there is some amount that is owed for rent or for a security deposit.

Conclusion

The Notice to End Tenancy is cancelled; the tenant has been awarded the sum of \$80.00, to be deducted from a future installment of rent.

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 06, 2015

Residential Tenancy Branch

