



## **Dispute Resolution Services**

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LTE Ventures Inc.  
and [tenant name suppressed to protect privacy]

### **DECISION**

#### **Dispute Codes**

MND; MNDC; MNSD; FF

#### **Introduction**

This is the Landlord's Application for Dispute Resolution, made September 15, 2016, seeking a monetary award for damages; compensation for damage or loss; to apply the security deposit towards its monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord's agents attended the Hearing which was held by telephone conference on March 17, 2017, at 1:00 p.m. The Tenant did not sign into the teleconference, which remained open for 45 minutes.

The Landlord's agents gave affirmed testimony at the Hearing. They testified that the Notice of Hearing documents and copies of the Landlord's documentary evidence were mailed to the Tenant, via registered mail, to the forwarding address provided by the Tenant on August 31, 2016. The tracking number for the registered documents was provided.

I am satisfied that the Tenant was duly served pursuant to the provisions of Section 89 of the Act, and the Hearing proceeded in her absence.

#### **Issue(s) to be Decided**

Is the Landlord entitled to a monetary award for damages to the rental unit, liquidated damages for early termination of lease; late fees; "NSF" fees; and pro-rated compensation because the Tenant did not move out of the rental unit at 1:00 p.m.?

#### **Background and Evidence**

The Landlord's agents gave the following testimony:

This tenancy began on June 1, 2016. The tenancy agreement is a one year lease, expiring May 31, 2017. Monthly rent was \$1,100.00, due on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit in the amount of \$550.00.

The Landlord issued a Notice to End Tenancy for Cause on July 7, 2016, which was effective August 31, 2016. The Tenant did not dispute the Notice and moved out on August 31, 2016.

The Tenant was late paying rent for August, 2016. The Landlord received the rent payment on August 12, 2016, and it was returned NSF. The Landlord seeks a \$25.00 late fee and to recover bank fees in the amount of \$25.00 for the returned cheque. The Tenant subsequently paid August's rent.

A condition inspection was performed on August 31, 2016, during which time the Tenant provided her forwarding address to the Landlord. The Tenant was not finished cleaning the rental unit at 1:00 p.m., and did not vacate the rental unit until "later in the afternoon, between 4:00 and 5:00 p.m."

The Tenant did not finish cleaning the rental unit, which took the Landlord's agents 6 hours to clean. The drapes were professionally cleaned at the beginning of the tenancy and required dry cleaning at the end of the tenancy.

Walls were damaged with multiple nail holes. The Tenant damaged the bedroom and the bathroom door. The bedroom door required replacement and the bathroom door required repair. The rental unit was newly renovated in 2012.

The Landlord provided a copy of the Condition Inspection Report, photographs and invoices in evidence to support their monetary claim.

The Landlord's Monetary Order Calculation document seeks a monetary award, calculated as follows:

Description	Claim
NSF and late fee (August, 2016 rent payment)	\$50.00
Liquidated damages	\$400.00
Replace bedroom door (parts, labour and toll charges)	\$250.00
Suite cleaning charges (6 hours @\$25.00 per hour)	\$150.00
Drapery dry cleaning	\$107.60
Restoring and painting bedroom wall	\$126.00
Restoring and painting bathroom door	\$63.00
Late move-out (pro-rated one day of rent)	\$36.16
Recovery of filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,282.76</b>

However, the Landlord's agent stated that the Tenant paid \$1,100.00 to the Landlord on September 21, 2016, and that the Landlord returned \$367.24 to the Tenant on September 30, 2016. Therefore, the Landlord is only seeking to retain the remainder of the security deposit. The Landlord's agents stated that the Tenant has cashed the Landlord's cheque in the amount of \$367.24 and therefore, the Landlord knows that she received it.

### **Analysis**

The addendum to the tenancy agreement includes clauses that allow for "a minimum service charge of \$25.00 for late payment, returned and non-sufficient funds".

Section 7 of the regulations allows for these non-refundable fees, 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.

[Reproduced as written.]

In this case, the Landlord seeks to recover charges under Section 7(c) and (d) of the regulation. Based on the Landlord's agents' undisputed affirmed testimony, I accept that the Tenant was

late with August, 2016 rent. Therefore, I allow the Landlord's claim made under Section 7(d) of the regulation, in the amount of \$25.00.

With respect to the Landlord's claim under Section 7(c), I find that the Landlord did not provide sufficient evidence of any bank charge levied against the Landlord for the NSF cheque (for example, a memo from the Landlord's financial institution advising of a service fee in the amount of \$25.00 against the Landlord for the NSF cheque). This portion of the Landlord's claim is dismissed.

There is a clause in the tenancy agreement with respect to liquidated damages in the amount of \$400.00 "to cover the costs and expenses of re-renting the premises", and which the Tenant initialled. Therefore, I allow this portion of the Landlord's claim.

Based on the Landlord's agents' undisputed affirmed testimony, I accept that the Tenant did not leave the rental unit reasonably clean and undamaged at the end of the tenancy. I find that the Landlord's claims for the cost of cleaning and repairs are reasonable, and I allow that portion of the Landlord's claim in the total amount of **\$696.60** (\$250.00 + \$150.00 + \$107.60 + \$126.00 + \$63.00).

Although the tenancy agreement and the Act provide that a tenancy ends at 1:00 p.m. on the last day of the tenancy, I find that the Landlord provided insufficient evidence that the Landlord suffered a loss as a result of the Tenant being 4 or 5 hours late moving out. Therefore, this portion of the Landlord's claim is dismissed.

The Landlord's claim had merit and therefore I find that the Landlord is entitled to recover the cost of the filing fee from the Tenant.

The Landlord has established a monetary award, as follows:

Description	Claim
Late fee (August, 2016 rent payment)	\$25.00
Liquidated damages	\$400.00
Replace bedroom door (parts, labour and toll charges)	\$250.00
Suite cleaning charges (6 hours @\$25.00 per hour)	\$150.00
Drapery dry cleaning	\$107.60
Restoring and painting bedroom wall	\$126.00
Restoring and painting bathroom door	\$63.00
Recovery of filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,221.60</b>

The Tenant has already paid \$1,100.00 towards the Landlord's claim. The Landlord returned \$367.24 of the Tenant's security deposit to the Tenant on September 30, 2016. Therefore, I find that the Landlord is holding the balance of \$182.76 of the security deposit (the "residue").

After setting off the Tenant's payment of \$1,100.00 towards the Landlord's award, I find that the Tenant owes the Landlord \$121.60. Further to the provisions of Section 72 of the Act, the Landlord may apply \$121.60 of the residue in full payment of its monetary award. I order that the Landlord return the remaining residue of the security deposit in the amount of \$61.16 to the Tenant forthwith.

### **Conclusion**

The Tenant is hereby provided with a Monetary Order in the amount of **\$61.16** for service upon the Landlord. This represents the balance of the security deposit after satisfaction of the Landlord's monetary award. This Order may be filed in the Provincial Court of British Columbia 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: March 30, 2017

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Residential Tenancy Branch