



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, O, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. The tenant testified that he provided documentary to the Residential Tenancy Branch a day late and this was not before the Arbitrator at the time of the hearing. The tenant testified that this evidence was not provided to the landlord. Consequently pursuant to rule 3.15 and 3.17 of the Rules of procedure I have not considered the tenant's documentary evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

At the outset of the hearing the landlord withdrew their application for a Monetary Order for damage to the unit, site or property and other issues.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

This tenancy started on December 01, 2015 for a fixed term tenancy that provides that the tenant must vacate the rental unit at the end of the term of November 30, 2016. Rent for this unit is \$1,125.00 per month due on the 1st of each month. The tenant paid a security deposit of \$562.50 on October 26, 2015.

The landlord testified that the tenant failed to pay rent for November 2016. The landlord understood the tenant may have sublet the rental unit; however, the tenant remained responsible to meet the terms of the tenancy agreement and the rent. The landlord seeks to recover the unpaid rent of \$1,125.00 from the tenant.

The landlord testified that the tenancy agreement provides for late fees and NSF fees of \$25.00 each per month in the event the tenant's cheque or in this case pre-authorised payment is declined due to insufficient funds or the rent is not paid on the first of each month. The landlord referred to their rent ledger and testified that the tenant's pre-authorised rent payments were declined due to insufficient funds for September, October and November, 2016. The tenant did pay the NSF fee for October, 2016 but still owes \$25.00 for both September and November, 2016. The tenant has also been

late with the rent, due to this, for October and November, 2016 and the landlord seeks to recover \$25.00 per month for these late rent payments.

The landlord testified that the landlord's account was charged with Strata fines due to either the tenant's actions or the actions of any sublet tenants allowed in the unit. The landlord referred to the rent ledger showing the fines paid of \$66.25 to the Strata in February, 2016 because the tenant missed a mandatory dryer and vent cleaning session after written notice was provided to the tenant ; a fine of \$50.00 on March, 2016 because the tenant had an unauthorised furniture delivery and failed to notify the Strata in advance; a charge of \$75.00 was made in March, 2016 for a replacement fob which was lost by the tenant; and a fine of \$65.05 in April, 2016 for the missed re-inspection of the dryer and vents after written notice was provided to the tenant. The landlord testified that letters concerning these fines were provided to the tenant and the tenant had the opportunity to dispute these fines with Strata but failed to do so.

The landlord seeks an Order to be permitted to keep the security deposit of \$562.50 to offset against the landlord's monetary claim.

The tenant did not dispute the landlord's claim for unpaid rent for November, 2016. The tenant testified that this was an error on his part as he thinks the sublet tenants moved out a month early.

The tenant disputed the landlord's claim for NSF and late fees. The tenant referred to the landlord's rent ledger and testified that this is unclear as to what the charges are for.

The tenant disputed the landlord's claim for Strata fines; the tenant testified that he is a single man working in a high stress business and it would not be economical for him to take time off to attend at his unit during working hours for Strata or the landlord to do inspections. These inspections should be organised after hours so working tenants can be at home. The tenant testified that with regard to the fine for unscheduled delivery of furniture the tenant testified that he spoke to the building manager and informed him he

was having a desk and office chair delivered and therefore he disputes this fine. The tenant testified that in regard to the cost of the new fob, he paid the sum of \$75.00 to the building manager in cash for the fob but did not get a receipt and now they want to charge him again.

The tenant does not dispute the landlord's application to keep the security deposit to offset against the unpaid rent for November, 2016.

The landlord testified that the landlord served Strata Notices upon tenants but it is not the landlord asking to enter a unit, it is the Strata and as such this is out of the landlord's control. In the Notice the tenants are given various options such as providing a key to their unit to a neighbour if they know they cannot be home. If the tenants are not at home then the Strata are not able to enter the tenant's unit. The landlord testified that they have no knowledge that the tenant paid for the fob in cash and the landlords paid for this in February, 2016.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

As the tenant does not dispute that he failed to pay rent for November and as this was a fixed term tenancy that did not end until November 30, 2016, I find the landlord has established a claim to recover the rent of **\$1,125.00**.

With regard to the late fees and NSF fees, I refer the parties to the Residential Tenancy Regulations s. 7 which provides for non-refundable fees charged to a tenant and states:

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.

I have reviewed the tenancy agreement and find under clause 2.1 of that agreement it does provide for both late fees and NSF fees of \$25.00. Consequently, I find in favour of the landlord's application to recover **\$100.00** from the tenant.

With regard to the landlord's application to recover Strata fines and the cost for a lost fob; the tenant was served notice of the mandatory inspection of dryers and vents and failed to make suitable arrangements for the Strata maintenance worker to enter the rental unit on two occasions. Further to this, I find the tenant has insufficient evidence to show he paid \$75.00 to replace the fob to the building manager and has insufficient evidence to show he had scheduled a furniture delivery. The landlord's documentary evidence compelling in the fact it shows that they were notified of the infractions by Strata and the tenant was duly notified and offered the opportunity to dispute these fines but failed to do so. As the landlord has incurred these costs due to the tenant's actions or neglect I am satisfied that the landlord is entitled to recover the cost for the replacement fob of **\$75.00** and the Strata fines of **\$181.30**.

I Order the landlord to retain the security deposit of \$562.50 pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlord's monetary claim. There has been no interest accrued on the security deposit for the term of the tenancy.

As the landlord's application has merit I find the landlord is entitled to recover the filing fee of **\$100.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Unpaid rent for November, 2016	\$1,125.00
NSF and late fees	\$100.00
Strata fines	\$181.30
Replacement fob	\$75.00
Subtotal	\$1,481.30
Plus filing fee	\$100.00
Less security deposit	(-\$562.50)
Total amount due to the landlord	\$1,018.80

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,018.80**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: June 07, 2017

Residential Tenancy Branch