



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent, cleaning charges, and an NSF fee. The tenant did not appear at the hearing. The landlord testified that the hearing package and evidence was sent to the tenant via registered mail on May 26, 2017 and the registered mail was successfully delivered on June 6, 2017. The landlord orally provided the registered mail tracking number as proof of service. The address used for service was the forwarding address the tenant provided to the landlord in writing on October 5, 2015. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to recover the amounts claimed against the tenant?

Background and Evidence

The month to month tenancy started on August 1, 2013. The tenancy agreement was provided as evidence. The tenant was required to pay rent of \$700.00 on the first day of every month.

The tenant had paid a security deposit of \$350.00; however, the landlord refunded the security deposit to the tenant since the landlord, a government housing organization, does not hold security deposits from its tenants.

The tenant failed to pay rent for September 2015 and October 2015. On October 5, 2015 the tenant and landlord's agent signed a document indicating the tenant would give up possession of the rental unit on October 6, 2015. The reason for leaving the

rental unit was noted as “rent not paid”. On October 8, 2015 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent to the tenant. The landlord testified that the rental unit was re-rented effective November 1, 2015. The landlord seeks to recover unpaid rent of \$1,400.00 from the tenant.

The landlord also seeks to recover an NSF of \$20.00 from the tenant. The tenancy agreement does not include a term that provides for an administrative fee for an NSF or dishonoured payment. The landlord did not provide documentary evidence to demonstrate the landlord was charged a fee by the landlord’s financial institution due to a dishonoured payment from the tenant.

The landlord also seeks to recover cleaning charges from the tenant. The landlord submitted that the landlord’s staff person spent 12 hours cleaning the rental unit. In support of that the landlord provided an undated condition inspection report signed by the landlord’s staff person and a time sheet for that staff person indicating he cleaned the unit for 12 hours on September 30, 2015. At \$20.00 per hour the landlord incurred a loss of \$240.00 for cleaning. During the hearing the landlord was agreeable to recovery of 8 hours of cleaning charges from the tenant in recognition the tenant is responsible to leave the rental unit “reasonably clean” under the Act.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Pursuant to section 45 of the Act, in order for a tenant to bring a month to month tenancy to an end and bring an end to their obligation to pay rent, the tenant must give the landlord at least one full month of notice.

In this case, I was provided unopposed evidence that the tenant failed to pay rent for September 2015. I was provided no indication the tenant had given a notice to end tenancy. Rather, the tenant agreed to give up possession of the rental unit effective October 6, 2015 and the only Notice to End Tenancy issued was that by the landlord in October 2015. I also accept the unopposed evidence that the rental unit was not re-rented until November 1, 2015. Therefore, I find I am satisfied that the tenant owes the landlord unpaid rent for the months of September 2015 and October 2015 in the sum of \$1,400.00.

As for the landlord’ request for an NSF fee, such fees may be charged pursuant to section 7 of the Residential Tenancy Regulations. Section 7 is reproduced below with my emphasis underlined:

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 tenancy agreement presented to me does not include a provision for payment of NSF fees. Accordingly, the landlord may not charge the tenant an NSF under section 7(1)(d) of the Regulations.

In order to recover an NSF fee under section 7(1)(c) of the Regulations I find it reasonable to expect that the landlord would produce documentary evidence to demonstrate the landlord's financial institution charged the landlord an NSF fee with respect to the tenant's rent payment. Since the landlord did not, I find this claim is unsupported and I deny the landlord's request for an NSF under section 7(1)(c).

As far as the cleaning charges, I accept the unopposed evidence that the tenant failed to leave the rental unit reasonably clean and I award the landlord \$160.00 for eight hours of cleaning.

I further award the landlord recovery of the \$100.00 filing fee paid for this application.

In light of all of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid rent: September 2015 and October 2015	\$1,400.00
Cleaning	160.00
Filing fee	<u>100.00</u>
Monetary Order	\$1,660.00

Conclusion

The landlord is provided a Monetary Order in the sum of \$1,660.00 to serve and enforce upon the tenant.

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 03, 2017

Residential Tenancy Branch