



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, FFT

Introduction

This hearing dealt with the Tenant's application filed under the Residential Tenancy Act (the "*Act*"), requesting an Order for the Landlord to comply with the *Act*, and the return of their filing fee. The matter was set for a conference call.

One of the Landlords, their rental agent (the "Landlord"), the Tenant, and the Tenant's husband (the "Tenant") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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.

Issue to be Decided

- Should the Landlord be ordered to comply with the Act?
- Is the Tenant entitled to the return of his filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on September 1, 2019, and that rent was set at \$2,345.20 and is to be paid by the first day of each month. The parties also agreed that the Landlord is holding a \$1,100.00 security deposit and a \$600.00 pet damage deposit for this tenancy. Both parties submitted a copy of the tenancy agreement attached two-page addendum into documentary evidence.

The Tenant testified that the Landlord was charging them more than the maximum allowable amount for a late fee, at \$25.00 per day, for each day that rent was paid late for this tenancy, which they believe is not allowed under the *Act*.

The Landlord testified that they had included a clause in their tenancy agreement that charged a \$25.00 late fee per occurrence. The Landlord testified that their interpretation of the *Act* was that they could change the maximum late fee for each day that the rent was late.

The Tenant testified that the Landlord was also charging them 2% interest on all outstanding amounts due for this tenancy, on late rent, on late fees, and agent fees for this tenancy, which they believe is not allowed under the *Act*.

The Landlord testified that they had included a clause in their tenancy agreement that allowed them to charged 2% interest on all outstanding balances for this tenancy.

The Tenant testified that the Landlord was charging them Agent fees for this tenancy, which they believe is not allowed under the *Act*. The Tenant submitted an invoice that they received from the Landlord into documentary evidence.

The Landlord testified that they had included a clause in their tenancy agreement that allowed the Landlord to charge all fees, from this rental agent for dealing with this tenancy to the Tenant.

The Tenant testified that the Landlord's agent attended the rental property on February 2, 2020, demanding to speak to them regarding an outstanding bill for this Tenancy. The Tenant testified that it was not a good time for them to speak to the Landlord's Agent, as they were busy, and that they asked the Landlord's Agent to leave and shut the door.

The Tenant testified that the Landlord's Agent refused to leave and proceeded to knock loudly at on the door for almost 20 minutes, demanding that the Tenant speak to them.

The Tenant testified that they and their children became very afraid and called their husband to come home and help them.

The Tenant's husband testified that when they arrived home, the Landlord's Agent was still at the door, knocking and demand to speak to the Tenant. The Tenant's husband testified that they repeatedly told the Landlord's Agent to leave but that the Landlord's Agent refused to leave until they said they were going to call the police.

The Landlord's Agent agreed that they attend the rental property on February 2, 2020, to speak to the Tenant regarding outstanding money due for the tenancy. The Landlord's Agent also agreed that when the Tenant asked them to leave, they did not leave, but instead called the Landlord, and agreed that they remained at the rental property until the Tenant's husband arrived.

Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I have reviewed the tenancy agreement and attached two-page addendum signed between these parties, and I find that sections 2 and 14 of this agreement contain terms that are contrary to the *Residential Tenancy Act* and the *Residential Tenancy Regulations*, I will address each term individually.

Section 2 of the addendum to this tenancy agreement states the following:

"2. Rent non-payment: Any non-payment of rent on or before the 1st day of each month for any reason including but not limited to Non-Sufficient Funds (NSF) or Stop Payment of a Cheque will incur an additional charge of \$25.00 per occurrence plus any NSF fee. These amounts become payable by the Tenant immediately and are added to the outstanding rent amount(s) due. Interest of 2% per month, compounded monthly, is payable on any and all amounts from the date such amounts become due from the tenant including any collection costs, including but not limited to Legal and Agent fees, skip tracing, etc."

[Reproduced as written]

I accept the testimony of the Landlord, that they define the term "per occurrence" as each day that the rent payment is late for an individual month, charging a daily late fee

of \$25.00 for each day that the rent is late for of this tenancy. The Residential Tenancy Regulation (Regulation) speaks to the allowable fee that may be charged by a landlord during a tenancy, section 7 of the Regulation states the following:

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.

Pursuant to section 7(1d) of the Regulation, a maximum late fee can not exceed \$25.00; in this case, I find that the Landlord has written a tenancy agreement which allows the late fee to exceed the maximum allowable amount.

I find that the Landlord has breached the Regulation by writing a tenancy agreement term that would allow for a late fee to exceed the maximum allowable amount. Section 5 of the *Act* states the following regarding attempts to contract contrary to the *Act* or the Regulation:

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

I find that the Landlord has attempted to contract out of the maximum allowable late fee as set out by Regulation. Consequently, I find that the term in this tenancy agreement regarding the payment of late fees to be of no effect.

I also find that the Landlord has included a clause in this tenancy agreement to charge the Tenant 2% interest on all outstanding amounts due under this tenancy agreement. Section 2 of the addendum to this tenancy agreement states the following regarding interest:

“2. Rent non-payment: Interest of 2% per month, compounded monthly, is payable on any and all amounts from the date such amounts become due from the tenant including any collection costs, including but not limited to Legal and Agent fees, skip tracing, etc.”

[Reproduced as written]

Section 7(1) of the Regulation sets out what allowable fee a Landlord may charge during a tenancy, and this section does not include a provision to allow of late fees. I find that the Landlord breached the Regulation by writing a tenancy agreement term that includes interest charges, that are not permitted under *Act* or Regulation. Pursuant to section 5 of the *Act*, I find that the term in this tenancy agreement regarding charging interest on outstanding amounts to be of no effect.

Additionally, I accept the agreed upon testimony of these parties that the Landlord has been charging property management, agent fees and administration costs to this Tenant. Pursuant to section 7(1) of the Regulation, I find that the Landlord breached the Regulation by charging fees that are not allowable under the *Act*. Consequently, I find that the term in this tenancy agreement regarding charging property management, collection costs, including but not limited to Legal and Agent fees, skip tracing agent fees to be of no effect.

The second term contained in this tenancy agreement that I found to be contrary to the *Act*, was section 14 of the addendum to this tenancy agreement, which states the following:

“14. Notice: The Tenant agrees to provide 100 days notice if they plan to vacate the property at the end of the lease or wish to renew the lease for a further one

year term or continue residency on such other terms that are mutually agreeable with the Landlord.”

[Reproduced as written]

Section 45 of the *Act* details the notice requirements for a tenant to end a tenancy, stating the following:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Pursuant to section 45(1) of the *Act*, a tenant is required to provide a landlord with one clear rental period's notice to end their tenancy. However, section 14 of this tenancy agreement states that this Tenant must provide 100 days' notice to end this tenancy.

Pursuant to section 45(1) of the *Act*, I find that the Landlord breached the *Act* by contracting to require more notice to end this tenancy than is permitted under the *Act*.

Consequently, I find that the term in this tenancy agreement requiring 100 days notice to vacate the property to be of no effect.

The Tenant has also requested that the Landlord be ordered to comply with section 28 of the *Act*. I accept the agreed upon testimony of these parties that the Landlord's Agent attended the rental property, in an attempt to speak to the Tenant, and that when the Tenant refused to speak to them and asked the Landlord's Agent to leave, the Landlord's Agent refused to leave. I also accept the testimony of the Tenant that when the Landlord's Agent remained on the rental property, they knocked on the door of the rental unit, demanding to speak to the Tenant for 20 minutes. Section 28 of the *Act* states the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that the Landlord's Agent's actions of refusing to leave the property after repeatedly being asked to leave and knocking loudly on the door for 20 minutes to have been an unreasonable disturbance, and a breached the section 28 of the *Act*. I order the Landlord and their Agent to comply with section 28 of the *Act* and respect the Tenant's right to quiet enjoyment.

Overall, in this case, I find that the Landlord has breached sections 5 and 28 of the *Act* as well as section 7 of the Regulation during this tenancy, by attempting to contract outside of the *Act*, by charging more than the legal amount allowed for a late fee, by charging for fees that are not allowable under the *Act* and by breaching the tenant's right to quiet enjoyment.

I grant the Tenant's request, and I order the Landlord to comply with the *Act* and the Regulation, to make no further attempts to contract contrary to the *Act* or the Regulation and to respect the Tenant's right to quiet enjoyment of the rental property.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. I grant permission to the Tenant to take a one-time deduction of \$100.00 from their next month's rent.

Conclusion

I order the Landlord to comply with section 5 of the *Act* when writing their tenancy agreements and to make no further attempts to contract contrary to the *Act* or Regulations.

I order the Landlord to comply with section 7 of the Residential Tenancy Regulation when writing their tenancy agreements and to make no further attempts to charge fees that are not permitted under the *Act*.

I order the Landlord to comply with section 28 of the *Act* and respect the Tenant's right to quiet enjoyment of the rental property.

I award the Tenant the recovery of their filing fee for this hearing, and I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's 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: June 8, 2020

Residential Tenancy Branch