



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the \$50.00 filing fee for the Application.

Both parties appeared, were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Preliminary Issue

At the outset of the hearing the Agent for the Landlord explained that the Tenants had paid the outstanding rent and a late payment fee on November 15, 2011. The Landlord had issued a receipt indicating for use and occupancy only. Nevertheless, the Landlord did not want to end the tenancy, they simply wanted the Tenants to pay the filing fee for the Application.

### Issue(s) to be Decided

Is the Landlord entitled to the filing fee for the Application?

### Background and Evidence

The Landlord issued the Tenants a 10 day Notice to End Tenancy for unpaid rent on November 2, 2011, indicating the Tenants failed to pay rent in the amount of \$375.00 on November 1, 2011, plus a late fee in the amount of \$25.00. The effective date on the Notice to End Tenancy was November 14, 2011.

The Landlord filed this Application on November 14, 2011.

The Tenants paid the Landlord \$400.00 on November 15, 2011, and the Landlord issued a receipt for use and occupancy only.

The Landlord is requesting the Tenants pay the \$50.00 fee for filing this Application.

The Tenant appearing at the hearing does not want to pay the Landlord the \$50.00 filing fee for the Application.

The Tenant argues that she told the Landlord that the rent would be paid on November 15, 2011, and it was. The Tenants feel the Landlord should not have filed the Application.

### Analysis

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

I find that the Tenants were late paying their rent. The tenancy agreement requires them to pay rent on the first day of the month. Although they promised the Landlord they would pay the rent on November 15, this does not change the fact the rent was due on November 1, 2011.

From the date of service of the Notice the Tenants had five days to pay the rent in full or make an Application to dispute the Notice. They failed to do this.

While the Tenants may have informed the Landlord they would pay on the 15<sup>th</sup>, they had already broken their promise to pay on the first day of the month. The Landlord was not required to wait and see if the Tenants paid the rent on the 15<sup>th</sup> before filing this claim.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Tenants breached the Act and tenancy agreement when they did not pay their rent on time. They did not dispute the Notice to End Tenancy within the required

time frame. Therefore, the Landlord was required to file an Application due to the Tenants' breach of the Act and the tenancy agreement.

I find the Landlord has suffered a loss of \$50.00 due to the breach of the Tenants and I order the Tenants to pay the Landlord this amount.

The Tenants must pay the Landlord the \$50.00 before 4:30 p.m. on December 15, 2011. If the Tenants fail to do this, I order that the Landlord may immediately retain \$50.00 from the security deposit held.

### Conclusion

The Tenants failed to pay rent on time in breach of the tenancy agreement and Act, and did not file to dispute the Notice to End Tenancy.

The Landlord had to file an Application due to the breach of the Tenants. The Landlord is entitled to recover the \$50.00 filing fee for the Application from the Tenants.

Lastly, I note the Tenants were cautioned that three instances of late rent payments *might* entitle the Landlord to end this tenancy in accordance with section 47 of the Act.

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 29, 2011.

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Residential Tenancy Branch