



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee paid for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

This oral hearing via teleconference started at 11:00 a.m. as scheduled, however, by 11:10 a.m. the Applicant-Landlord had not dialled into the conference call and as a result, the hearing proceeded in the Landlord's absence.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to keep the Tenants' security deposit?

### Background and Evidence

This month-to-month tenancy started on June 15, 2010. Rent is \$700.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenants paid a security deposit of \$350.00 at the beginning of the tenancy.

The Landlord provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2012 that alleges the Tenants had rent arrears of \$400.00. The Landlord also provided a statement of account that shows \$375.00 is alleged to be rent owed from March 2011 and \$25.00 was for a late fee. The Tenants deny that there are any rent arrears as alleged. The Tenants claim that the Landlord took over the rental property in May of 2011. The Tenants also claim that according to records they received from the Ministry of Income Assistance, their rent payment for March 2011 was paid in full to the previous Landlord.

### Analysis

In the absence of any evidence from the Landlord to the contrary, I accept the evidence of the Tenants that there are no rent arrears as alleged because March 2011 rent was paid in full. Consequently, I find that there are no grounds to uphold the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 4, 2012 and it is cancelled.

The Landlord also sought to recover a late payment fee of \$25.00. I find that there is no evidence of a late payment and that even if there were, the Landlord is not entitled to charge this fee. Section 7 of the Regulations to the Act says that a Landlord may only charge a late payment fee (of a maximum of \$25.00) *if there is a term in the Parties' tenancy agreement to that effect*. The copy of the tenancy agreement provided by the Landlord as evidence at the hearing does not contain a term regarding the requirement of the Tenants to pay late fees.

### Conclusion

The Landlord's application is dismissed in its entirety. 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: January 26, 2012.

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Residential Tenancy Branch