



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, compensation for damage and loss under the Residential Tenancy Act, (the “Act”), regulation or tenancy agreement, recovery of the filing fee.

The Landlord testified that they served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 03, 2012, and provided the tracking information from the Canada Post receipt. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Act.

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

The Landlord’s evidence submitted indicated the correct spelling of the Tenant’s first name. As a result I determined that it was appropriate to amend the Landlord’s application to reflect the correct spelling of the first name used by the Tenant.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary order for unpaid rent, compensation for damage and loss under the Act, regulation or tenancy agreement, recovery of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy commenced on August 01, 2007 for subsidized housing on a month to month basis. The Landlord did not submit a copy of the tenancy agreement into evidence. The Landlord stated that the rent is due on the first day of the month and that the current amount of the rent is \$704.00. The Landlord submitted into

evidence a copy of their accounting ledger with regards to the Tenant's rent payments and arrears. The Landlord stated that the Tenant is still residing in the rental unit, but is declining to pay the rent arrears at this time. The Landlord filed for dispute resolution on December 30, 2011.

The Landlord stated that the Tenant's rental subsidy for November and December 2010 resulted in a monthly rent of \$565.00. The Landlord stated that the Tenant was in rent arrears for November 2010 (\$565.00) and December 2010 (\$565.00). The Landlord stated that the Tenant issued two cheques for \$565.00 each in December 2010 to cover the rent for November and December 2010. The Landlord stated that one of the Tenant's cheques, cheque #98 issued December 01, 2010, was NSF as a result the Tenant remained in rent arrears for the December 2010 rent of \$565.00. The Landlord stated that they are not charged an NSF fee by the bank as their account is a "trust" account as they are a housing society. The Landlord stated that they noted the rent arrears in their ledger and when the Tenant failed to rectify the rent arrears from the NSF cheque the Landlord issued the Tenant a letter on February 08, 2011 formally requesting the Tenant pay the outstanding rent of \$565.00 and fees for late rent and NSF cheque. The Landlord submitted a copy of the February 08, 2011 letter into evidence. The Landlord stated that the Tenant failed to repay the rent owed.

The Landlord stated that it is their policy is that a Tenant owes late fees whenever they are late paying rent. The Landlord stated that the initial tenancy agreement signed by the Tenant in 2007 did not contain any terms with regards to late payment of rent. However, the Landlord stated that in October 2009 they gave all of their tenants a copy of a policy in writing informing them that an administration fee for late payment of rent would be charged in the amount of \$25.00 for each late payment of rent from that point forwards. The Landlord stated that no amendment to the tenancy agreement was signed with the Tenant with regards to the policy. The Landlord did not submit a copy of the policy into evidence.

The Landlord submitted a copy of their accounting ledger with regards to the Tenant for the period May 01, 2010 to December 03, 2011. The Landlord stated the Tenant currently owes them \$702.00 consisting of \$565.00 in rent arrears for December 2010 and a balance of \$137.00 in late fees for numerous occurrences where the rent was paid late.

The Landlord is requesting a monetary order of \$752.00, representing \$565.00 for the rent arrears owed for December 2010, \$137.00 for late rent fees, and \$50.00 for the filing fee for this Application.

### Analysis

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

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement between these parties is that rent is due on the first of the month. I find that the Landlord's evidence supports that the Tenant failed to pay rent for December 2010, as a result I find that the Landlord is entitled to a monetary order for \$565.00 for the unpaid rent.

Section 7 of the Residential Tenancy Regulation, (the "Regulation"), addresses the charging of fees as follows:

#### **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.

The Landlord provided no evidence that they had been charged a fee by a financial institution for the return of this tenant's cheque and their testimony indicated that they are not charged fees by their financial institution as they are a society that operates a trust type of account. As a result I find that the Landlord has provided insufficient evidence that they are owed any NSF fees. The Landlord confirmed that the tenancy agreement signed by the Tenant contains no terms with regards to late fees or administration fees being charged by the Landlord. As a result I dismiss the Landlord's

claim for administration fees or late fees as they do not meet the criteria set out in the Act or Regulation.

As the Landlord has mostly succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding pursuant to section 72 of the Act.

I grant the Landlord an order under section 67 for **\$615.00**, representing the rent arrears of \$565.00 and the filing fee of \$50.00.

### Conclusion

I dismiss the Landlord's claim for late fees, administration fees, NSF fees in the amount of \$137.00.

I grant the Landlord's claim for unpaid rent of \$565.00 and the \$50.00 filing fee for the application. I find that the Landlord is entitled to monetary order pursuant to section 67 against the Tenant in the amount of **\$615.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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: March 20, 2012.

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Residential Tenancy Branch