



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; damage to the unit; and damage or loss under the Act, regulations or tenancy agreement; and, authority to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, showing the landlord sent the hearing documents to the tenant at the rental unit on April 26, 2012. The landlord testified the tenant was still residing in the unit as of the date of mailing.

I was satisfied the landlord sufficiently served the tenant with the hearing documents and I proceeded to hear from the landlord without the tenant present.

The landlord confirmed that the tenant vacated the rental unit April 30, 2012 and that an Order of Possession was not longer required. Accordingly, I do not provide one with this decision.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent, loss of rent and late fees from the tenant?
2. Is the landlord authorized to retain the security deposit in partial satisfaction of the amounts owed to the landlord?

### Background and Evidence

The tenancy commenced October 1, 2010 and the tenant paid a \$427.50 security deposit. The tenancy agreement provides that the monthly rent is \$855.00 payable on the 1<sup>st</sup> day of every month. The tenancy agreement has a provision for late fee if rent is paid more than 5 days after it is due. The rent was increased to \$890.00 by way of a Notice of Rent Increase with an effective date of April 1, 2012.

The landlord provided evidence that the tenant failed to pay \$5.00 of the rent owed for March 2012 and failed to pay any rent for April 2012. On April 11, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door. The Notice had a stated effective date of April 21, 2012 and indicates \$920.00 in rent was outstanding as of April 1, 2012. There is also a notation on the Notice that the \$920.00 is comprised of \$890.00 in rent for April 2012, a balance outstanding of \$5.00 and a late fee of \$25.00.

The landlord testified that the tenant did not pay any of the rental arrears and did not dispute the Notice. The landlord also explained that the balance of \$5.00 relates to the preceding month's rent.

In filing this application the landlord sought compensation for loss of rent and a late fee for May 2012 if not paid. During the hearing the landlord confirmed that the unit has not yet been re-rented and sought to recover loss of rent and a late fee for May 2012.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; Notice of Rent Increase; 10 Day Notice; Proof of Service of the 10 Day Notice; and, registered mail receipt.

### Analysis

The Act requires a tenant to pay rent when due, in accordance with the terms of their tenancy agreement and Act. Upon review of the tenancy agreement, Notice of Rent Increase, and 10 Day Notice, I am satisfied the tenant owes the landlord \$890.00 in rent for the month of April 2012. I further accept the landlord's evidence that \$5.00 remained outstanding for a previous month.

Upon review of the tenancy agreement, I accept that the tenant agreed to pay the landlord a late fee of \$25.00 if rent was more than 5 days late. Pursuant to section 7 the Residential Tenancy Regulations, I find the landlord is entitled to a late fee of \$25.00 for the month of April 2012.

With respect to the loss of rent for May 2012, I find the tenant failed to give sufficient notice to end the tenancy at the end of April 2012 and remained obligated to pay rent for May 2012. Therefore, I grant the landlord's request to recover loss of rent for the month of May 2012. I do not grant the landlord a late fee for May 2012 as the tenancy agreement, and the provision for a late fee, came to an end when the tenant vacated the unit on April 30, 2012.

The landlord is awarded the filing fee paid for this application. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord.

In light of the above findings, the landlord is provided a Monetary Order calculated as follows:

March 2012 rent	\$ 5.00
April 2012 rent	890.00
April 2012 late fee	25.00
May 2012 loss of rent	890.00
Filing fee	50.00
Less: security deposit	<u>(427.50)</u>
Monetary Order	\$ 1,432.50

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

#### Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,432.50 to serve 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: May 15, 2012.

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Residential Tenancy Branch