



# 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 the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and late fees pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:42 a.m. in order to enable her to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. Landlord SJ testified that she posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door on January 5, 2013. Landlord VL testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on January 18, 2013. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. Landlord SJ testified that the hearing package was returned to the landlord by Canada Post as unclaimed a day before this hearing.

Landlord VL testified that she noticed that she had spelled the tenant's first name incorrectly in the original application for dispute resolution, but modified this to the spelling noted above by way of a faxed amendment to the Residential Tenancy Branch on January 18, 2013. She testified that she mailed the hearing package to the tenant using the tenant's correct first name. The Canada Post Tracking slip confirmed that the landlord's hearing package was sent to the tenant using the tenant's correctly spelled first name. Under these circumstances, I amend the tenant's first name to that which appears above. I find that the landlord served all of the above documents to the tenant in accordance with the *Act*.

At the commencement of the hearing, Landlord SJ testified that the landlord had accepted the tenant's rent payment of \$700.00 on January 18, 2013 and \$700.00 for February's rent on February 6, 2013. She withdrew the application for an end to the

tenancy and an Order of Possession. She reduced the amount of the monetary award the landlord was seeking from \$1,525.00, the amount noted in the original application for dispute resolution, to \$175.00. She said that this revised amount seeks recovery of the filing fee for this application plus five late rental payment fees of \$25.00 each, as per the terms of the Residential Tenancy Agreement (the Agreement).

#### Issues(s) to be Decided

Is the landlord entitled to a monetary award for late fees for late payment of rent? Is the landlord entitled to recover the filing fee for this application from the tenant? Is the landlord entitled to retain a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

#### Background and Evidence

This tenancy commenced as a 3 ½ month fixed term tenancy on March 15, 2012. When the initial term of this tenancy expired, the tenancy continued as a periodic tenancy. Monthly rent is set at \$700.00, payable in advance on the first of each month, plus heat and hydro. The landlord continues to hold the tenant's \$350.00 security deposit paid on March 6, 2012.

The landlord entered undisputed written evidence to demonstrate that the tenant has failed to pay her monthly rent on time for the five months from September 2012 until January 2013. The landlord provided a copy of the Agreement and noted the provision in section B of the Addendum to that Agreement requiring the payment of a \$25.00 late fee to be added to the tenant's rent if payment was not received on time. The landlord requested that the monetary award requested be taken from the tenant's security deposit.

#### Analysis

Based on the landlord's undisputed oral and written evidence, I find that the landlord is entitled to recover \$125.00 in late fees from the tenant as per the provisions of the Addendum to the Agreement. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee for this application. I allow the landlord to retain the above amounts from the tenant's security deposit, pursuant to section 72 of the Act.

#### Conclusion

I allow a monetary award in the landlord's favour in the amount of \$175.00 for recovery of late fees and the filing fee for this application. I order the landlord to retain \$175.00 from the tenant's \$350.00 security deposit to implement the monetary award issued in

this decision. The remaining portion of the tenant's security deposit currently held by the landlord is hereby reduced to \$175.00.

The landlord's application for an Order of Possession is withdrawn.

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: February 13, 2013

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Residential Tenancy Branch

