



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Jordan Development Corporation Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the conference call hearing and was accompanied by an observer who is also employed by the landlord company. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail individually on January 24, 2013, neither of the 2 named tenants attended. The line remained open while the phone system was monitored for 10 minutes and the only participants who joined the hearing were the landlord's agent and observer. The landlord's agent orally provided tracking numbers for the two registered mail packages and testified that the documents were mailed on January 24, 2013, and testified that both envelopes were returned to the landlord undelivered on February 27, 2013. The *Act* states that documents served by registered mail are deemed to have been served 5 days after mailing. I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

The landlord's agent gave affirmed testimony and provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision. The landlord's observer did not testify and did not partake in the hearing.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 1, 2010 and the tenants are still resident in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1<sup>st</sup> day of each month. On September 1, 2010 the landlord also collected a security deposit from the tenants in the amount of \$390.00 which is still held in trust by the landlord.

The landlord's agent further testified that during the tenancy, 2 rent cheques have been returned dishonoured by the financial institution. Copies of the returned cheques have been provided for this hearing. The first is a cheque dated October 1, 2012 in the amount of \$800.00 which shows that it was returned on October 3, 2012 for "Insufficient funds." The other is dated November 1, 2012 in the amount of \$800.00 which shows that it was returned on November 5, 2012 for "No Chequing Privilege." Each of the 2 cheques is accompanied by a "Returned Item Advice," which, in both cases, states that a fee, if applicable, will be debited from the landlord's account, but does not indicate whether it is applicable, and if so, what that fee amount is.

The landlord's agent also testified that the tenancy agreement, a copy of which was also provided for this hearing, provides for:

"10. ARREARS. Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord."

The landlord has also provided a copy of a money order dated October 3, 2012 in the amount of \$800.00 which is attached to a note that the landlord's agent testified was written by the tenant to the landlord's agent. The note agrees to pay the \$50.00 with the rent for the following month. Also provided is a tenant ledger showing that the tenants paid an NSF fee as well as a late fee each in the amount of \$25.00 in April, 2012, and again in July and then again in August. The ledger shows that the fees for October and November 2012 have not been paid.

The landlord claims \$100.00 as against the tenants for 2 administrative fees as set out in the tenancy agreement in the amount of \$25.00 each as well as \$25.00 for each of the 2 cheques as a fee charged by the financial institution, for a total of \$50.00 in fees for each of the 2 cheques, and recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

The regulations to the *Residential Tenancy Act* permit a landlord to charge a fee that is charged by a financial institution for a returned cheque as well as a late payment fee or returned cheque fee if contained in the tenancy agreement. In this case, I find that the tenancy agreement contains a \$25.00 fee clause for each returned cheque. Whether or not the landlord was charged a fee by the financial institution, or if so, the amount of such fee is not known. The landlord's agent did not provide any evidence with respect to the bank fees, and therefore, I find that the landlord has established a claim for administrative fees as set out in the tenancy agreement in the amount of \$25.00 for each of the 2 cheques. The landlord's application for an additional \$25.00 per cheque for fees charged by the financial institution is hereby dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding on the parties and may be enforced.

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: April 16, 2013

---

Residential Tenancy Branch

