



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Westcott Middlegate Developments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MNSD FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for unpaid rent or utilities, authorization to retain the tenants' security deposit and to recover the filing fee.

An agent for the landlord (the "agent") and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the tenants were served with the Notice of Hearing personally on July 21, 2013 at approximately 11:00 a.m. at the rental unit and that a witness, SJ, was present to witness the tenants being served. Witness SJ testified under oath that she personally witnessed the tenants being served by the landlord on the morning of July 21, 2013. Based on the above, I find the tenants were sufficiently served in accordance with the *Act*.

### Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

### Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on May 15, 2013. Monthly rent in the amount of \$954.00 was due on the

last day of the previous month, so for example, June 2013 rent was due on May 31, 2013. The tenants paid a security deposit of \$477.00 at the start of the tenancy.

The agent stated that she served tenant AS with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated June 1, 2013 at the rental unit on June 1, 2013 at approximately 10:00 a.m. A copy of the 10 Day Notice was submitted in evidence and indicates that \$954.00 in unpaid rent was owed by the tenants as of May 31, 2013. The agent stated that the tenants did not dispute the 10 Day Notice or pay the amount owing as indicated on the 10 Day Notice. The agent stated that the tenants have failed to pay June 2013 rent of \$954.00 and July 2013 rent in the amount of \$954.00. The agent stated that according to the tenancy agreement, the landlord was seeking the late fee of \$25.00 for the months of June 2013 and July 2013, which is supported by the "cost recovery schedule", indicated in the written tenancy agreement. The agent stated that the tenants vacated the rental unit on July 26, 2013.

The agent stated that the tenants have not provided their written forwarding address. The landlord applied for dispute resolution claiming towards the security deposit, unpaid rent, late fees and the filing fee on July 11, 2013.

The landlord submitted the 10 Day Notice and written tenancy agreement in evidence.

### Analysis

Based on the documentary evidence and undisputed testimony of the agent and the witness for the landlord provided during the hearing, and on the balance of probabilities, I find the following.

**Claim for unpaid rent** – The agent for the landlord testified that the tenants failed to pay \$954.00 for June 2013 rent and \$954.00 for July 2013 rent. The landlord is seeking \$1,908.00 in unpaid rent as a result. In addition, the landlord is seeking a \$25.00 late fee for June 2013 rent that has not been paid, and a \$25.00 late fee for July 2013 rent that has not been paid in accordance with the "cost recovery schedule" as written in the tenancy agreement.

Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenants failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof by establishing a monetary claim of **\$1,958.00** comprised of \$954.00 owing for June 2013 rent, \$954.00 owing for July 2013 rent, and \$25.00 for each of the months of June 2013

and July 2013, for late fees in accordance with the “cost recovery schedule” of the tenancy agreement which specifically states that all overdue accounts will be subject to a fee of \$25.00.

The tenants’ security deposit of \$477.00 has accrued \$0.00 in interest since the start of the tenancy. The agent stated that the tenants have not provided their forwarding address in writing to the landlord.

As the landlord was successful with their application, **I grant** the landlord the recovery of the filing fee in the amount of **\$50.00**.

**Monetary Order** – I find that the landlord has established a total monetary claim in the amount of **\$2,008.00** comprised of \$1,958.00 in unpaid rent and late fees, plus the \$50.00 filing fee. I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants’ security deposit. **I authorize** the landlord to retain the tenants’ full security deposit of \$477.00 in partial satisfaction of the claim and **I grant** the landlord a monetary order under section 67 for the balance due of **\$1,531.00**.

#### Conclusion

I find that the landlord has established a total monetary claim of \$2,008.00. **I authorize** the landlord to retain the tenants’ full security deposit of \$477.00 in partial satisfaction of the claim and **I grant** the landlord a monetary order under section 67 for the balance owing by the tenants in the amount of **\$1,531.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: October 16, 2013

---

Residential Tenancy Branch

