



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a landlord's application to recover a late fee from the tenants. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Is the landlord entitled to collect a late fee from the tenants?

### Background and Evidence

The parties executed a tenancy agreement in April 2011. The tenancy agreement provides that rent is due on the 1<sup>st</sup> day of every month. The tenancy agreement provides the following with respect to late payment of rent:

“Occasionally, if a rent is not paid by the first day of the rental month a twenty-five (\$25.00) administrative (late) fee will be charged. Too many late rental payments could go against the tenancy.”

Tenants generally give their rent payments to the landlord by depositing a rent cheque in a drop box located on the property.

The landlord submitted that the rent payment for July 2013 was not received until the afternoon of July 2, 2013. The landlord submitted that he checked the drop box multiple times: after midnight of July 1, 2013; in the morning of July 2, 2013; and, in the afternoon of July 2, 2013. The landlord claimed the cheque was not in the drop box until he checked the box in the afternoon of July 2, 2013.

On July 4, 2013 the landlord wrote a letter to the tenants explaining the times he checked the drop box and requiring them to pay a late fee of \$25.00 by July 10, 2013. The landlord issued a demand letter on August 22, 2013 requiring the tenants to pay the late fee no later than September 22, 2013. The tenants did not pay the late fee and the landlord filed this Application for Dispute Resolution on September 25, 2013.

The tenant acknowledged that the above-described letters were received from the landlord and that the late fee was not paid. The tenant submitted that upon receiving the letter(s) the tenant verbally told the landlord that they were not going to pay the late fee since they were not late paying the rent.

The tenant testified that they remember that evening as they had gone to assist a friend with a repair issue and the rent cheque was deposited in the drop box later in the evening of July 1, 2013.

The tenant took issue with the use of the word “occasionally” in the term providing for late fees as the tenant was of the position that the landlord charges late fees discriminatory, depending on whether the landlord has an issue with a particular tenant.

The landlord denied charging the late fee discriminatory. Rather, the landlord submitted that most tenants who pay late occasionally just add the late fee onto their rent cheque.

### Analysis

The Manufactured Home Park Tenancy Regulations (the Regulations) permit a landlord to charge tenants an administrative fee of up to \$25.00 for the late payment of rent where the tenancy agreement provides for such a charge.

Upon review of the tenancy agreement provided as evidence, I am satisfied the tenancy agreement provides for the charge of an administrative fee of \$25.00 for late payment of rent. Accordingly, the issue for me to determine is whether the rent was paid late for the month of July 2013.

The burden of proof in a dispute resolution proceeding is the balance of probabilities, or what is more likely than not.

In this case, the parties provided disputed verbal testimony as to when the rent cheque was deposited in the drop box by midnight of July 1, 2013. However, I find I am persuaded by the other evidence in concluding the tenants likely deposited the rent cheque in the drop box after July 1, 2013. The other evidence that leads me to this

conclusion includes the landlord's written correspondence to the tenants on July 4, 2013 and August 22, 2013 describing the receipt of rent after the due date of July 1, 2013 and I find the content of the letters was consistent with the landlord's verbal testimony. I find it unlikely the landlord would go to such great lengths to write multiple letters to the tenants and file for a dispute resolution proceeding over \$25.00 if the tenant's rent cheque had been received on time. Also of consideration, is the tenant's testimony that they went to assist a friend with a repair issue the evening of July 1, 2013 and I find it reasonably probable the payment of rent was overlooked by this distraction until the following day.

In light of the above, I grant the landlord's request to recover a \$25.00 late fee from the tenants. As the landlord attempted to resolve this dispute prior to filing this Application for Dispute Resolution on multiple occasions I also award the landlord recovery of the \$50.00 paid for this Application for Dispute Resolution. Therefore, the landlord is provided a Monetary Order in the total sum of \$75.00.

It is strongly suggested that the tenants provide the landlord with post-dated cheques so as to avoid the possibility of future late payments. As a word of caution to the tenants, repeated late payment of rent (three times or more) is grounds for ending a tenancy for cause.

### Conclusion

The landlord has been provided a Monetary Order in the total amount of \$75.00 to serve upon the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: November 06, 2013

---

Residential Tenancy Branch

