



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Advanced Property Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution, evidence and notice of hearing documents on January 24, 2014 by registered mail, no one for the tenant attended. The landlord's agent testified that the documents were sent on that date and in that manner and has provided a copy of the Canada Post receipt bearing that date. The landlord's agent further testified that the documents were returned to the landlord by Canada Post unclaimed by the tenant.

The *Residential Tenancy Act* states that documents served in that manner are deemed to have been served 5 days later, and does not specify that the deeming provision does not apply if there is evidence to the contrary. I have reviewed the Canada Post receipt and envelope showing that the address to be served is the dispute address. Therefore, I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The line remained open while the phone system was monitored for 10 minutes prior to the commencement of the hearing, and the only participant who joined the call was the landlord's agent.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord's agent advised that the tenant has vacated the rental unit near the beginning of February, 2014 and the landlord withdraws the application for an Order of Possession.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late fees?
- Is the landlord entitled to keep the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on December 1, 2010 and ended on or about the beginning of February, 2014. Rent in the amount of \$886.55 was payable in advance on the 1<sup>st</sup> day of each month. A written tenancy agreement has been provided which was signed by the parties on November 23, 2010. The tenancy agreement required a payment of a security deposit in the amount of \$425.00 by November 26, 2010, however the tenant paid the amount in installments. The security deposit is still held in trust by the landlord.

The tenant failed to pay the full rent when it was due for the months of October and November, 2013 and the landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 5, 2013, a copy of which has been provided for this hearing. The notice states that the tenant failed to pay rent in the amount of \$1,215.21 that was due November 1, 2013 and contains an expected date of vacancy of November 15, 2013. The landlord's agent testified that the full rent was never paid, and arrears of rent and late payments remain outstanding. Also provided is a copy of a tenant ledger showing that the tenant made payments after the issuance of the notice to end tenancy, but also that rent became due again on December 1, 2013 and January 1, 2014, leaving \$1,538.31 outstanding in unpaid rent, for which the landlord claims.

The landlord also claims a late fee of \$25.00 per month as provided in the tenancy agreement, for the months of December, 2013 and January, 2014.

An employee of the landlord notified the landlord's agent on or about February 2, 2014 that it appeared the tenant was moving out of the rental unit. The landlord's agent drove to the rental unit on February 3, 2014 and found that the tenant had in fact vacated.

The landlord claims \$1,588.31 for unpaid rent and late fees to the end of the tenancy, as well as recovery of the \$50.00 filing fee for the cost of the application.

### Analysis

I have reviewed the tenancy agreement, tenant ledger and notice to end tenancy, and I find that the tenant has been in arrears of rent without paying in full at the beginning of October, November or December, 2013 or for January, 2014, and I find that rent is payable on the 1<sup>st</sup> day of each month. I accept the tenant ledger and testimony of the landlord's agent, and in the absence of any evidence to the contrary, I am satisfied that the landlord has established a monetary claim as against the tenant for unpaid rent in the amount of \$1,538.31.

The regulations to the *Residential Tenancy Act* state that a landlord may charge a late fee of no more than \$25.00 if the tenancy agreement provides for the fee, and I find that it does. Therefore, I find that the landlord has established a monetary claim as against the tenant for \$50.00 in late fees in addition to the outstanding rent.

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.

I hereby order the landlord to keep the \$425.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order for the difference in the amount of \$1,213.31.

### Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed as withdrawn.

I hereby order the landlord to keep the security deposit and I grant the landlord a monetary order as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,213.31.

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: March 12, 2014

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Residential Tenancy Branch

