



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF

### Introduction

This is an application filed by the landlord for a monetary order for unpaid rent and utilities, for money owed or compensation for damage or loss and recovery of the filing fee.

The landlords attended the hearing by conference call and gave undisputed testimony. The tenants did not attend or submit any documentary evidence. The landlords state that the tenants were first served with the original notice of hearing package and the submitted documentary evidence on February 22, 2014 by Canada Post Registered Mail. The landlord's subsequently filed an amended application for dispute resolution on February 28, 2014 and served the tenants with the amended application on February 28, 2014 by Canada Post Registered Mail. The landlords have provided copies of both proof of service documents, a Customer Receipt Tracking number for each occasion. The landlord states that both packages were returned by Canada Post after attempted service was made and notices left. Both notices were unclaimed and then returned to the landlord. The landlord clarified during the hearing that the application for dispute resolution was made prior to serving the tenants with a 10 day notice to end tenancy issued for unpaid rent on March 2, 2014. Both landlords stated that the tenants did not vacate the rental unit until March 15, 2014, so they would have received the notice of attempted service from Canada Post and did not respond. I accept the undisputed testimony of the landlords and find that the tenants were properly served with the notice of hearing package and the submitted documentary evidence as well as the amended monetary claim application.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order?

### Background and Evidence

This tenancy began on June 15, 2013 on a fixed term tenancy ending on June 30, 2014 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$2,500.00 payable on the 1<sup>st</sup> of each month and a security deposit of \$1,250.00 was paid on June 14, 2013.

The landlord seeks an amended monetary claim for \$11,047.60. This consists of \$2,500.00 in unpaid rent for March, \$2,500.00 in unpaid rent for February 2014, \$2,500.00 in unpaid rent for January 2014, \$50.00 in unpaid rent for August 2013, \$447.60 in unpaid utilities (for the period November 9 to January 17), \$350.00 in late rent fees (for 7 months between August and February), \$100.00 for the estimated water bill (for January 18 to February 28 and \$2,500.00 for a lease break fee for ending the tenancy prematurely.

The landlord states that the tenants were served with a 10 day notice to end tenancy issued for unpaid rent dated March 2, 2014. This notice states that rent of \$7,500.00 in rent was due on March 1, 2014 and was not paid. The notice displays an effective end of tenancy date of March 15, 2014. The landlord stated that the tenants complied and moved out on March 15, 2014. The landlord has submitted a copy of a proof of service document which states that the tenants were served with the notice on March 2, 2014 with a witness.

The landlord also claims that the tenants failed to pay rent of \$50.00 for August 2013. The landlord relies on a bank statement which shows a deposit of \$2,450.00 on August 7, 2013. The landlord stated that the tenants would direct deposit the monthly rent to their bank account.

The landlord seeks \$447.60 for utilities for the period November 9 to January 17 based upon an unpaid utilities bill. The landlord also seeks \$100.00 for an estimated amount for water for the period January 18 to February 28.

The landlord seeks \$350.00 for late rent fees for 7 months from August 2013 to February 2014. The landlord relies on the addendum #8 which states, "Late Rent: There will be a late payment charge of \$50.00 for every week or portion of week that the outstanding rent is not paid. The landlord does not give up the right to end tenancy for non-payment of rent. An N.S.F. cheque will be considered a late payment of rent."

The landlord also seeks a monetary claim for \$2,500.00 from the tenant for prematurely ending the tenancy as the fixed term ends on June 30, 2014. The landlord also stated

that they are no longer renting the property and that the property was put up for sale after the tenants vacated.

### Analysis

I accept the undisputed testimony of both landlords and find that both tenants were properly served with the 10 day notice to end tenancy issued for unpaid rent dated March 2, 2014 by posting it to the rental unit door. Both tenants vacated the rental unit on March 15, 2014 in compliance with the notice and are presumed to have conclusively accepted that the tenancy was at an end. On a balance of probabilities, I find that the landlord has established a monetary claim for unpaid rent of \$7,550.00. This consists of the \$2,500.00 per month for 3 months (January to March) and the \$50.00 in arrears from August 2013. The landlord has also established a claim for \$447.60 for unpaid utilities.

The landlords have failed to establish a claim for \$350.00 in late rent fees. Residential Tenancy Regulation #7, states,

#### **Non-refundable fees charged by landlord**

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

I find that the landlord by charging a \$50.00 fee for late payment of rent to be an unconscionable condition of the tenancy and contrary to section 7 (d) of the Regulations. Addendum condition #8 is not enforceable, as such the landlord's request for \$350.00 in late rent fees is denied. This portion of the landlord's claim is dismissed.

The landlord also seeks \$100.00 for an estimated water bill not yet received. I find that with nothing to support this portion of the landlord's claim and that is clearly premature, I dismiss this portion of the claim with leave to reapply, when or if the landlord has received an accurate accounting of the water bill for January 18 to February 28.

I dismiss the landlord's claim for \$2,500.00 for breaking the lease and ending the tenancy prematurely. Although it is undisputed that the tenants ended the fixed term tenancy prematurely, the landlord has failed to mitigate any possible losses by trying to re-rent the property. The landlord's testimony stated that since the tenants vacated they

are no longer renting the property and that it is currently for sale. As such, the landlords cannot reasonably expect to recoup losses if the property is no longer available for rent.

The landlords have established a total monetary claim of \$7,997.60 for unpaid rent and utilities. The landlords are also entitled to recovery of the \$100.00 filing fee. The landlords are granted a monetary order for \$8,097.60. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary order for \$8,097.60.

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 15, 2014

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Residential Tenancy Branch

