



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Landlord also applied to keep all or part of the pet damage or security deposit and to recover the filing fee from the Tenants for the cost of the Application.

The Landlord's agent appeared for the hearing and provided affirmed testimony and written evidence prior to the hearing. The Landlord's agent testified that the Tenants had been personally served with a copy of the Application and Notice of Hearing documents with a witness. Based on this evidence, and in the absence of any evidence from the Tenants to contradict this, I find that the Tenants were served the documents in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

At the start of the hearing, the Landlord withdrew the request for an Order of Possession as the Tenant had left the rental suite. As a result, I dismiss this portion of the Landlord's Application.

There was no appearance for the Tenants or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the Act. As a result, I have carefully considered the undisputed evidence of the Landlord as follows.

### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and a late fee for February, 2014?
- Is the Landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

### Background and Evidence

The Landlord's agent testified that this tenancy started on July 15, 2013 for a fixed term of one year due to end on June 30, 2014, but ultimately ended with the Tenants leaving the rental suite on February 22, 2014.

The Landlord and Tenants signed a written tenancy agreement and the Landlord collected a security deposit from the Tenants in the amount of \$475.00 on July 12, 2013 which the Landlord still retains. According to the tenancy agreement, rent in the amount of \$950.00 was payable by the Tenants on the first day of each month. The tenancy agreement also contained a clause (clause 12) enabling the Landlord to charge a \$25.00 late fee for late payment of rent or for returned cheques due to insufficient funds.

The Landlord's agent testified that the Tenants failed to pay full rent on February 1, 2014 in the amount of \$950.00. On February 2, 2014 the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by attaching it to the Tenants' door. The Notice shows an expected date of vacancy of February 13, 2014, for a total amount of \$950.00 for unpaid rent due on February 1, 2014; although the Notice was not signed. The Landlord also claims a \$25.00 fee for late rent relating to February, 2014. Therefore, the total amount of the Landlord's claim is \$975.00.

### Analysis

Based on the Landlord's agent's affirmed testimony and the evidence provided, including the Notice and the absence of any evidence from the Tenants to refute the evidence, I find that the Tenants did not dispute the Notice and have not paid the Landlord the outstanding rent for February, 2014. As a result, I award the Landlord unpaid rent in the amount of \$950.00 for February, 2014.

Section 7(d) of the *Residential Tenancy Regulation* allows a Landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Clause 12 of the written tenancy agreement, provided by the Landlord as evidence, indicates that such a late rent fee can be charged. As a result, I find that the Landlord is also entitled to the \$25.00 late fee relating to February, 2014 unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$50.00 filing fee for the cost of this application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$1,025.00.

As the Landlord already holds a \$475.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded \$550.00.

### Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$550.00**. This Order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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 04, 2014

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Residential Tenancy Branch

