



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPRIET  
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 in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 24, 2014, no one for the tenant attended. The landlord has provided evidence of the documents being served on that date and in that manner and I am satisfied 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 hearing any testimony, 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.

### Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- 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 and N.S.F. fees?
- Is the landlord entitled to keep all or part of security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on March 1, 2014 and is to expire on February 28, 2015. Rent in the amount of \$1,120.00 per month is payable in advance on the 1<sup>st</sup> day of each month. The landlord collected a security deposit from the tenant on March 1, 2014 in the amount of \$560.00 which is still held in trust by the landlord and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the first month of rent was paid by cheque and on March 7, 2014 the landlord was notified that the cheque had been returned for insufficient funds, and the landlord has provided a copy of a statement showing that the landlord's financial institution charged a fee of \$25.00.

The landlord's agent served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on March 10, 2014. A copy of the notice has been provided for this hearing and it is dated March 10, 2014 with an effective date of vacancy of March 23, 2014. Both pages of the 2-page form have been provided. The notice states that the tenant failed to pay rent in the amount of \$1,120.00 that was due on March 1, 2014.

The tenant also signed a pre-authorized debit form so that future months of rent would be automatically provided to the landlord, however April's rent was also returned for insufficient funds. The tenant still resides in the rental unit, and May's rent has not yet been returned N.S.F.

The landlord's agent also testified that the tenancy agreement provides for a late fee for each month of rent in the amount of \$25.00 as well as any service fee charged to the landlord by the financial institution for N.S.F. payments. The landlord claims unpaid rent in the amount of \$3,360.0 as well as N.S.F. fees and late fees for March and April, 2014.

The tenant has not paid any rent since the issuance of the notice, but the landlord's agent is not certain whether or not May's rent will be returned for insufficient funds.

Further, the tenant has not served the landlord with an Application for Dispute Resolution disputing the notice to end tenancy.

### Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must pay the rent in full or dispute the notice within 5 days of service, and that service by posting the notice to the door of the rental unit or other conspicuous place is deemed to have been served 3 days after posting. If the tenant does not pay the rent in full or dispute the notice within that 5 day period, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out by that date, which must be no less than 10 days after service.

In this case, I am satisfied that the landlord's agent posted the notice on the door of the rental unit on March 10, 2014 and is deemed to have been served on March 13, 2014. The tenant did not dispute the notice and did not pay the rent in full within 5 days, and therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

I am also satisfied that the tenant is in arrears of rent the amount of \$1,120.00 per month for March and April, 2014, and the landlord is entitled to rent in the amount of \$1,120.00 for May, 2014.

With respect to late fees and N.S.F. fees, the landlord has provided evidence of a \$25.00 fee charged by the landlord's financial institution for March's N.S.F. cheque but not of any fee charged by the financial institution for the returned automatic debits. I am satisfied that the landlord has established that late fees for March and April are payable in the amount of \$25.00 as specified in the tenancy agreement. However, there is no evidence before me that May's rent will be returned N.S.F. or that the landlord is entitled to any late fees for May. I find that the landlord is entitled to \$25.00 for N.S.F. fees and \$50.00 for late fees.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I order the landlord to retain the security deposit in the amount of \$560.00 and I grant the landlord a monetary order for the difference in the amount of \$2,925.00. In the event that the landlord receives May's rent by way of automatic debit, I order the landlord to deduct that amount from the monetary award.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further order the landlord to keep the \$560.00 security deposit in partial satisfaction of the claim, and I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,925.00.

These orders are final and binding 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: May 08, 2014

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Residential Tenancy Branch

