



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Codes:** MNR, MNSD, OPR, FF

**Introduction:**

This was an application by the landlord for an Order for Possession, a Monetary Order and an Order to retain the security deposit in partial satisfaction of the monetary claim. Only the landlord's agent CT attended the application.

**Issues:**

Is the landlord entitled to an Order for Possession and Monetary Order?

**Background and Evidence:**

CT testified that the tenancy began on August 1, 2013 with rent in the amount of \$ 1,950.00 due in advance on the first day of each month. The tenants paid a security deposit of \$ 950.00 on September 1, 2013. CT testified that she served the Notice to End the tenancy on November 6, 2014 by posting it to the tenants' door and the dispute resolution package by sending it by registered mail on November 18, 2014. CT testified that the arrears from September through December are \$ 6,150.00.

In addition the landlord is also claiming for \$ 1,000.00 in strata bylaw fines for smoking and \$ 350.00 for professional cleaning costs as stipulated in the tenancy agreement. The landlord is also claiming for "repair and improvement" fee of \$ 2,500.00 also as stipulated in the tenancy agreement. These provisions are as follows:

**Additional Information:**

"Pets are NOT permitted in this unit. As discussed, if tenant has pet in the unit, tenant need to inform the landlord in written 1 week in advance. As agreed, Tenant need to pay \$ 2500.00 to landlord as the future unit improvement and Sanitize fee is \$ 350. Total of \$ 2850 non refundable." reproduced as written.

Analysis:

Based on the evidence of the landlord I find that the tenant was deemed to have been personally served with a Notice to End Tenancy for non-payment of rent on November 9, 2014 by posting it to the door on January 3, 2014. I find that the application for Dispute Resolution was deemed to have been served on November 23, 2014 by registered mail. The tenants have not paid all the outstanding rent on time and have not applied for arbitration to dispute the Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order for possession effective two days after service on the tenants.

Section 7(1). of the Regulations made pursuant to the Residential Tenancy Act provides that the only non refundable fees allowed to be charged by a landlord are as follows:

**Non-refundable fees charged by landlord**

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

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (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;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

I find that the clause in the tenancy agreement calling for a "sanitize and improvement fee" of \$ 2,800.00 is a penalty and not a genuine pre-estimate of any possible damages the landlord has or might suffer. It is also an attempt to circumvent the lawful provisions of the Act regarding pets; namely the collection of a pet deposit.

Section 5 of the Act states as follows:

**This Act cannot be avoided**

- 5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Accordingly I find that the clause is contrary to the Act and Regulations and therefore void and unenforceable. I have dismissed all claims in reliance upon that clause in the tenancy agreement.

I find that the landlord has established a claim for unpaid rent totalling \$ 6,150.00, strata fines amounting to \$ 1,000.00 and the filing fee of \$ 100.00 for a total claim of \$ 7,250.00.

Conclusion:

I have granted the landlord an Order for Possession. This order may be filed in the Supreme Court and enforced as an Order of that Court. I order that the landlord retain the deposit and interest of \$ 950.00 and I grant the landlord an order under section 67 for the balance due of **\$ 6,300.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenants as soon as possible. I have dismissed all other claims. The landlord has leave to reapply for any provable loss of revenue or actual cleaning and repair costs.

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: December 16, 2014

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Residential Tenancy Branch

