



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on April 21, 2015. Canada Post tracking numbers were provided by the landlord in verbal testimony. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and late fees?
- Is the landlord permitted to keep all or part of the security deposit?

### Background and Evidence

The landlord provided a copy of the tenancy agreement in documentary evidence. The tenancy agreement confirmed the landlord's testimony that this tenancy started on February 01, 2014 for a fixed term of a year. The tenancy reverted to a month to month tenancy on February 01, 2015. Rent for this unit was \$1,600.00 per month due on the 1<sup>st</sup> of each month in advance. The tenants paid a security deposit of \$800.00 on February 03, 2014.

The landlord testified that the tenants have been late with their rent many times over the tenancy. The tenants were served a 10 Day Notice to End Tenancy when rent was not paid on the day it was due for January, February and March, 2015. Copies of the 10 Day Notices have been provided in documentary evidence. The landlord testified that a One Month Notice to End Tenancy (the Notice) was served on March 02, 2015. This Notice had an effective date of March 31 and was posted to the tenants' door. The Notice stated that the tenants have been repeatedly late paying rent.

The landlord testified that the tenants did not pay rent for April and May and abandoned the rental unit on or about May 15, 2015. The landlord seeks to recover unpaid rent for April and May, 2015 of \$3,200.00.

The landlord testified that there is a clause in the tenancy agreement concerning fees for late payment of rent. This clause indicates that the tenants must pay \$3.00 per day for any days in a month that rent is late. The landlord seeks to recover late fees for April and May, 2015.

The landlord requested an Order to keep the security deposit of \$800.00 to offset against the unpaid rent and to recover the filing fee of \$50.00.

### Analysis

The tenants did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have considered the landlord's documentary evidence and sworn testimony before me. I refer the parties to s. 26 of the *Act* which states:

*26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I am satisfied with the undisputed evidence before me that the tenants failed to pay rent for April and May, 2015 of \$3,200.00 and consequently the landlord is entitled to recover this amount from the tenants. A Monetary award has been issued pursuant to s. 67 of the *Act*.

With regard to the landlord's claim to recover late fees for April and May, 2015; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2) which states:

*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;*

*(2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.*

I have reviewed the tenancy agreement and find there is a clause contained in the agreement that provides for an administrative fee for late fees of \$3.00 a day. As the tenants failed to pay rent for April and May I must restrict the landlord's claim for late fees for April and May to \$25.00 per month. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$50.00** in late fees for April and May, 2015.

I Order the landlord to keep the security deposit of \$800.00 pursuant to s. 38(4)(b) of the *Act*. This amount has been offset against the unpaid rent.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent for April and May	\$3,200.00
Late fees	\$50.00
Filing fee	\$50.00

Less security deposit	(-\$800.00)
Total amount due to the landlord	\$2,500.00

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,500.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: June 02, 2015

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Residential Tenancy Branch

