



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding C. Ross McDonald, Marilyn Boyes and Lighthouse Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **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 MB attended the application.

### Issues:

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

### Background and Evidence:

MB testified that the tenancy began February 1, 2015 with rent in the amount of \$ 1,200.00 due in advance on the first day of each month. The tenants paid a security deposit of \$ 600.00 on February 6, 2015. MB testified that she served the Notice to End the tenancy on June 9, 2015 and the dispute resolution package by handing it to the tenants on June 9, 2015 and July 13, 2015 respectively. MB agent testified that the arrears to date were \$ 1,800.00 and that the landlords are also claiming a late payment fee of \$ 30.00 pursuant to the tenancy agreement.

### Analysis:

Based on the evidence of the landlord I find that the tenants were been personally served with a Notice to End Tenancy for non-payment of rent on June 9, 2015 by handing it to them. I find that the application for Dispute Resolution was served on July 13, 2015 by handing it to the tenants on that date. 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 landlords are entitled to an order for possession effective two days after service on the tenants.

The landlords claimed a late payment fee of \$ 30.00. Paragraph 1. of the addendum of the tenancy agreement states:

#### LATE FEES

1. Rent payments received after the 5<sup>th</sup> of the month will be subject to a minimum service charge of \$ 30.00
2. Rent payments received after the 15<sup>th</sup> of the month will be subject to a minimum service charge of \$ 50.00

Section 7. of the regulations made pursuant to the Residential Tenancy Act provides that the maximum allowable fee for a late payment of rent is \$ 25.00.

#### 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**;

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

Section 5 of the Act states:

#### 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**.

Here the landlords' addendum is contrary to Regulation section 7 and accordingly the entire section of the addendum regarding late fees is invalid and unenforceable pursuant to section 5 of the Act. I have therefore dismissed the landlords' claim for any late payment fees herein.

I find that the landlords have established a claim for unpaid rent totalling \$ 1,800.00 and the filing fee of \$ 50.00. I direct the landlords to retain the security deposit of \$ 600.00 and grant the landlords a monetary Order in the amount of \$ 1,250.00.

Conclusion:

I have granted the landlords 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 landlords retain the deposit and interest of \$ 600.00 and I grant the landlords an order under section 67 for the balance due of **\$ 1,250.00**. 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.

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: August 28, 2015

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Residential Tenancy Branch

