



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1041 in order to enable the tenant to connect with this teleconference hearing scheduled for 1030. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent confirmed that she had full authority to act on behalf of the landlord.

The agent testified that the landlord served the tenant with the dispute resolution package on 20 July 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Preliminary Issue – Amendment to Landlord's Application

The agent testified that the tenant vacated the rental unit on 31 August 2015 and that the tenant had paid all rent arrears. The agent asked to amend the landlord's

application to remove the claim for an order of possession, for July's and August's rents and September's rental loss.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution. As there is no prejudice to the tenant in any of the requested amendments, all amendments are allowed.

#### Preliminary Issue – Order for Evidence After Hearing

At the hearing I reviewed the evidence I had before me with the agent. Although the landlord's faxed evidence indicated that there were fourteen pages, the third page of the fax was missing from the file.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the Arbitrator.

This evidence was served to the tenant in the original dispute resolution package and to this Branch; however, the evidence did not appear in the physical file. As the tenant is in possession of this page, there is no undue prejudice to the tenant in permitting the landlord to send the missing page after the hearing. I ordered the landlord to submit the page before the end of the day. I received it immediately after the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 September 2014 and ended 31 August 2015. Monthly rent of \$900.00 was due on the first. The landlord continues to hold the tenant's security deposit in the amount of \$450.00, which was collected 14 August 2014.

The parties entered into a written tenancy agreement dated 14 August 2014. That agreement contained an addendum. Clause B of that addendum set out liability for late fees:

Late payments, returned and non-sufficient cheques (NSF) are subject to a minimum service charge of \$25.00 each, or the then current rate charge for such services by the Bank, whichever is greater.

I was provided with a ledger. The ledger sets out the following payment dates:

<b>Rent Due</b>	<b>Paid By</b>
1 December 2014	16 December 2014
1 January 2015	9 January 2015
1 March 2015	9 March 2015
1 April 2015	10 April 2015
1 May 2015	8 May 2015
1 June 2015	15 June 2015
1 July 2015	after 7 July 2015

The landlord claims for \$200.00:

<b>Item</b>	<b>Amount</b>
December 2014 Late Fee	\$25.00
December 2014 NSF Charge	25.00
January 2015 Late Fee	25.00
March 2015 Late Fee	25.00
April 2015 Late Fee	25.00
May 2015 Late Fee	25.00
June 2015 Late Fee	25.00
July 2015 Late Fee	25.00
<b>Total Monetary Order Sought</b>	<b>\$200.00</b>

### Analysis

Paragraphs 7(1)(c) and (d) of the *Residential Tenancy Regulations* (the Regulations) set out the collection of non-refundable fees in relation to returned cheques and late fees:

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

[emphasis added]

Pursuant to subsection 7(2) of the Regulations a late fee charge may only be applied if the tenancy agreement provides for that fee. The tenancy agreement contained this clause:

Late payments, returned and non-sufficient cheques (NSF) are subject to a minimum service charge of \$25.00 each, or the then current rate charge for such services by the Bank, whichever is greater.

Paragraph 7(1)(d) of the Regulations uses the singular article “an” in relation to the fee. Unlike the tenancy agreement, the provision does not include the word “each”. I find that the use of the singular article “an” in paragraph 7(1)(d) of the Regulations and the exclusion of a word such as “each”, “per”, or “both” that would denote that the fee could be applied in the plural is intentional. I find that paragraph 7(1)(d) of the Regulations permits a charge of up to \$25.00 only for late payment of rent, a returned check, or late payment of rent and a returned cheque.

The ledger indicates that the \$25.00 charge in relation to the NSF cheque was for an “NSF Charge”. I understand this to mean the bank’s regular fees charged to the landlord. The landlord did not provide me with anything indicating that this amount was the amount charged by the bank or paid to the bank. Thus, I dismiss the landlord’s monetary claim in respect of the returned cheque fee as the landlord has failed to establish that this charge was the bank’s actual service fee.

It appears that despite the incorrect use of “each” in the addendum, the landlord has operated in accordance with the Act by only charging a single fee of \$25.00. As such, I am not prevented by subsection 5(1) of the Act from enforcing the provision in respect of the single fee. The landlord has proven that the tenant failed to pay rent on time on seven occasions. I find that the landlord is entitled to its fee of \$25.00 per occasion.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Pursuant to paragraph 72(2)(b), the landlord may choose to withhold the monetary award from the tenant’s security deposit in which case the value of the tenant’s security deposit is reduced to \$225.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$225.00 under the following terms:

<b>Item</b>	<b>Amount</b>
December 2014 Late Fee	\$25.00
January 2015 Late Fee	25.00
March 2015 Late Fee	25.00
April 2015 Late Fee	25.00
May 2015 Late Fee	25.00
June 2015 Late Fee	25.00
July 2015 Late Fee	25.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$225.00</b>

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 subsection 9.1(1) of the Act.

Dated: September 22, 2015

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Residential Tenancy Branch

