



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 553 HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 38.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord's agent, AS ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package ("Application") on October 27, 2015, which was witnessed by the landlord's husband. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlord's Application on October 27, 2015.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 2, 2015 ("10 Day Notice"), by way of posting to his rental unit door on the same date. The landlord provided a signed proof of service indicating that she personally posted it to the door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 5, 2015, three days after its posting.

At the outset of the hearing, the landlord withdrew her Application for an order of possession for unpaid rent. The landlord confirmed that the tenant had vacated the rental unit. Accordingly, this portion of the landlord's Application is withdrawn.

At the outset of the hearing, the landlord requested an amendment to increase the monetary claim sought for unpaid rent and late fees. The landlord stated that because her Application was filed in October 2015, the November 2015 rent and late fee was not yet due. The landlord initially made an Application for unpaid rent and late fees and indicated the amount owing at that time. Pursuant to section 64(3)(c) of the Act, I amend the landlord's Application to increase the landlord's monetary claim to include November 2015 rent of \$700.00 and late fees for October and November 2015 totalling \$50.00. The tenant is aware that rent is due on the first day of each month as per his tenancy agreement. The tenant is aware that he may be subject to late fees of \$25.00 for paying rent late, as per the addendum to his tenancy agreement. The tenant continued to reside in the rental unit, despite the fact that the 10 Day Notice required him to vacate the rental unit by October 15, 2015, the corrected effective date, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent and late fees at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent and late fees, despite the fact that he did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

The landlord testified that this tenancy began on September 1, 2014 and ended on November 7, 2015. Monthly rent in the amount of \$700.00 was payable on the first day of each month. A security deposit of \$350.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement and addendum for this hearing. The landlord confirmed that she spoke to the tenant on November 7, 2015, when he indicated that he would return the next day to retrieve his belongings. The landlord stated that she did not see the tenant return to the rental unit after November 7, 2015.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$700.00 was due on October 1, 2015. The notice indicates an effective move-out date of October 12, 2015.

The landlord seeks a monetary order of \$995.00 for unpaid rent and late fees as well as to recover the \$50.00 filing fee. The landlord claimed that the tenant paid \$500.00 in partial rent on October 5, 2015 and that he still owes a balance of \$200.00 for October 2015 rent. The landlord confirmed that the tenant owes \$20.00 in late fees for August 2015, as he only paid \$5.00 towards the total \$25.00 in late fees for that month. The landlord explained that the tenant failed to pay the \$25.00 late fee for September and October 2015 rent.

The landlord indicated that the tenant failed to pay rent of \$700.00 for November 2015, despite the fact that he resided in the rental unit until November 7, 2015 and did not advise the landlord when he was leaving. The landlord stated that a rental loss was suffered as the landlord was unable to re-rent the unit until December 1, 2015. The landlord confirmed that when she did not see the tenant return to the rental unit after November 7, 2015, she posted a written 24-hour notice on his door to enter the unit. The landlord explained that she entered the unit on November 9, 2015, and had to assess the damage and complete cleaning. She confirmed that after this work was done, she posted an advertisement on an online website to re-rent the unit. She stated that the advertisement was online for about a week, she had approximately two showings and the unit rented quickly. She confirmed that the new tenant moved into the unit on December 1, 2015.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on October 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on October 15, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by October 15, 2015. However, the tenant vacated the rental unit on November 7, 2015.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss

that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$200.00 for October 2015. Therefore, I find that the landlord is entitled to \$200.00 in rental arrears for the above period.

The tenant was required to vacate the rental unit by October 15, 2015, the corrected effective date on the 10 Day Notice. As per the landlord's evidence, the tenant vacated on November 7, 2015, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$700.00 was due on November 1, 2015. Therefore, I find that the landlord is entitled to \$700.00 in rental arrears for the entire month of November 2015, despite the fact that the tenant vacated on November 7, 2015. I make this finding because the landlord had to post a written notice to enter the unit, examine the rental unit, clean the unit, and advertise and have showings to re-rent the unit. The landlord was unable to secure a new tenant until December 1, 2015.

The landlord provided undisputed evidence that the tenant failed to pay late fees totalling \$95.00 from August to November 2015. As per section 7(1)(d) and 7(2) of the *Residential Tenancy Regulation*, I find that the landlord is entitled to \$95.00 in late fees as the tenant was late paying rent, the fees are indicated in the addendum to the tenancy agreement which the tenant signed, and the maximum charge for these late fees are \$25.00 per month.

The landlord continues to hold the tenant's security deposit of \$350.00. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$350.00 in partial satisfaction of the monetary award. No interest is payable over this period.

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

## Conclusion

I issue a monetary order in the landlord's favour in the amount of \$695.00 against the tenant as follows:

Item	Amount
Unpaid October 2015 Rent	\$200.00
Unpaid November 2015 Rent	700.00
Unpaid August 2015 Late Fee	20.00
Unpaid September 2015 Late Fee	25.00
Unpaid October 2015 Late Fee	25.00
Unpaid November 2015 Late Fee	25.00
Less Security Deposit	-350.00
Recovery of Filing Fee	50.00
<b>Total Monetary Award</b>	<b>\$695.00</b>

The landlord is provided with a monetary order in the amount of \$695.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlord's Application for an order of possession is withdrawn.

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 18, 2015

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Residential Tenancy Branch

