



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Witness gave evidence under oath of the service of the Landlord’s application for dispute resolution on the Tenant in person on May 17, 2016.

### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent and interest?

### Background and Evidence

The tenancy started on April 16, 2013 and ended on May 31, 2016. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit.

The Landlord states that the tenancy agreement provides that rent of \$1,300.00 is payable on the first day of each month and that if the Tenant pays on time the rent would only be \$1,200.00 per month. The Landlord states that the tenancy agreement

also provides that if the Tenant does not pay in time the Tenant will pay interest charges of 2.5% and that this is calculated each month. The Landlord states that the interest is calculated on what is owed each month and sometimes the Tenant has been as late as 5 months. The Landlord states that the Tenant agreed to pay the interest and rental arrears of over \$7,000.00 and to give up the security deposit against this amount.

The Tenant states that the unit was advertised at \$1,200.00 per month and that the Landlord had her sign the tenancy agreement in a rush when she was just out of the shower and running late for work. The Tenant indicates that the tenancy agreement surprised her but she felt she had no choice as the Landlord told her she had to sign it in order for the security deposit to be effective. The Tenant states that she feels the agreement is unfair and oppressive. The Tenant states that after the first year of the lease she started getting interest charges.

The Landlord states that she does not know what rent would be owed if calculated without the interest. The Landlord states that she does not know what rent would be owed if calculated at \$1,300.00 per month or \$1,200.00 per month. The Landlord claims \$7,081.20.

The Tenant states that if calculated correctly the rent payable over the term of the tenancy would have been \$28,800.00 but that she paid \$30,500.00 over the length of the tenancy including the security deposit. The Tenant states that she owes no rent monies to the Landlord.

### Analysis

Section 6(3)(b) of the Act provides that a term of a tenancy agreement is not enforceable if the term is unconscionable. Section 3 of the Regulations defines unconscionable term as a term that is oppressive or grossly unfair to one party. Section 7 of the Regulations provides that a landlord may charge an administration fee of not more than \$25 for late payment of rent if the tenancy agreement provides for this charge.

As the Act regulates late rent payments and provides for a \$25.00 fee I find that interest that is calculated on late payments to be grossly unfair and therefore unconscionable and contrary to the Act. I find therefore that the terms of the tenancy agreement that provides for the interest charge on late rent to be unenforceable. As the Landlord was unable to provide a monetary amount that reflects only unpaid rent I find that the Landlord has not substantiated the amount claimed and I dismiss the claim for unpaid rent. As the Landlord's claim has had no merit I find that the Landlord is not entitled to recovery of the filing fee and that the application is in effect dismissed.

The Landlord claimed return of the security deposit prior to the end of the tenancy and I note that no evidence was provided in relation to the Tenant's provision of a forwarding address. I therefore decline to deal with the return of the security deposit and note that the Parties are at liberty to deal with the security deposit as required under the Act.

#### Conclusion

The application is dismissed.

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 17, 2016

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Residential Tenancy Branch