



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOTAL CONCEPT DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for unpaid rent and to recover the filing fee from the Tenants.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. There was no appearance by the Tenants during the seven minute hearing or any submission of evidence prior to the hearing.

The Landlord’s agent testified that the Tenants were each served with a copy of the Application and the Notice of Hearing documents for this hearing on November 25, 2016 by registered mail. This was sent to the forwarding address provided by the Tenants at the end of the tenancy on the move-out condition inspection report.

The Landlord provided a copy of the Canada Post tracking numbers as evidence to support this method of service. In the absence of any evidence from the Tenants to dispute this, I find the Landlord served the Tenants pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the “Act”).

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord’s agent, I find the Tenants were deemed served with the required documents on November 30, 2015 pursuant to the Act. The hearing continued in the absence of the Tenants.

### Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent?
- Is the Landlord entitled to late rent fees?

### Background and Evidence

The Landlord's agent testified that this tenancy began on April 1, 2015 for a fixed term of one year after which it was intended to continue on a month to month basis. A written tenancy agreement was completed and shows that rent payable under the agreement was established at \$1,600.00 on the first day of each month. The Tenants paid an \$800.00 security deposit to the Landlord at the start of the tenancy which the Landlord still retains.

The Landlord's agent's testimony is that the Tenants failed to pay rent for July and August 2015. As a result, the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on August 27, 2015. The Notice was provided into evidence and shows a vacancy date of September 9, 2015 due to \$3,250.00 in unpaid rent.

The Tenants did not dispute the Notice and accepted the Notice by moving out pursuant to the end date of the tenancy on September 9, 2015. The Tenants failed to pay rent for September 2015 bringing the total rental arrears to \$4,800.00 which the Landlord now seeks to recover from the Tenants.

The Landlord also seeks to recover two late rent fees for July and August 2015 pursuant to section 10 of the addendum to the tenancy agreement which requires the Tenants to pay a \$25.00 fee for late rent payments. The Landlord's agent testified that the Tenants had given written permission on the move-out condition inspection report to keep their security deposit and to offset against the unpaid rent. Therefore, the Landlord seeks to recover \$4,050.00 from the Tenants.

### Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. I find that, based on the Landlord's agent's undisputed written evidence and oral testimony, the Tenants owe the Landlord unpaid rent in the amount of \$4,800.00 as claimed by the Landlord. As the Tenants have already provided the Landlord with written consent to keep their security deposit, this amount is reduced to \$4,000.00.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Therefore, in accordance with section 10 of the addendum to the signed

tenancy agreement between the parties, I find that there is sufficient evidence to prove that the Landlord is entitled to the two late rent fees claimed in the amount of \$50.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$50.00 filing fee for the cost of having to make this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$4,100.00.

### Conclusion

The Tenants have failed to pay rent. Therefore, the Landlord is granted a Monetary Order pursuant to Section 67 of the Act in the amount of **\$4,100.00**. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenants fail to make voluntary payment.

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 14, 2016

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Residential Tenancy Branch