



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This application was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that hearing packages were sent to each tenant via registered mail, at the rental unit address, on June 19, 2017 and the registered mail packages were returned as unclaimed. The landlord testified that the tenants did not move out of the unit until July 9, 2017. The landlord provided the registered mail receipts, including tracking number, as proof of service. Under section 90 of the Act a person is deemed to have received mail five days after mailing, even if the person refuses to accept or pick up their mail.

Accordingly, I deemed the tenants served with notification of this proceeding five days after the registered mail packages were mailed to them and I continued to hear from the landlord without the tenants present.

Since the tenants have moved out of the rental unit and the landlord regained possession, the landlord no longer requires an Order of Possession and I do not provide one with this decision.

As for the landlord's monetary claim, the landlord explained that she had included an estimate for damages and cleaning based on what she had seen during the tenancy when filing the application. I found the claim for damage or cleaning was pre-mature; not clearly identified in the claim; unsupported by corroborating evidence; and the application was not amended pursuant to the Rules of Procedure. Therefore, I did not further consider a damage or cleaning claim with this application and such claims are dismissed with leave to reapply.

The landlord requested that the monetary claim be amended to include loss of rent for the month of July 2017 since the tenants remained in possession of the unit during the month of July 2017 and the landlord was not able to re-rent the unit for July 2017. I found the request would be reasonably foreseeable by the tenants since the tenants remained in possession of the rental unit until July 9, 2017 and I permitted the oral request for amendment.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for unpaid and/or loss of rent and a late fee from the tenants?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The one year tenancy started on June 1, 2016 and was to continue for another fixed length of time after the expiry of the fixed term. The tenants paid a security deposit of \$550.00. Under the tenancy agreement, the tenants were required to pay rent of \$1,100.00 on the first day of every month. Term 10 of the tenancy agreement also provides for a late fee of \$25.00 if rent is not paid by the due date. In March 2017 the landlord served the tenants with a Notice of Rent Increase to increase the monthly rent to \$1,140.00 starting on July 1, 2017.

The tenants failed to pay rent for June 2017 and the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) by placing the 10 Day Notice in their mailbox on June 2, 2017. The 10 Day Notice indicates rent of \$1,100.00 was outstanding as of June 1, 2017 and has a stated effective date of June 13, 2017. Tenants did not pay the outstanding rent, did not file to dispute the 10 Day Notice and did not vacate the rental unit until July 9, 2017.

The landlord seeks to recover unpaid rent of \$1,100.00 for June 2017; loss of rent of \$1,140.00 for July 2017 and a \$25.00 late fee for the month of June 2017.

The landlord provided a copy of the tenancy agreement; Notice of Rent Increase; 10 Day Notice; Proof of Service for the 10 Day Notice; and, registered mail receipts as documentary evidence for this proceeding.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Upon consideration of the unopposed evidence before me, I find the tenants were obligated to pay rent of \$1,100.00 on the first day of every month and failed to do so for the month of June 2017. Therefore, I award the landlord recovery of unpaid rent of \$1,100.00 for the month of June 2017.

Section 7 of the Residential Tenancy Regulations permits a landlord to charge a tenant a late fee of up to \$25.00 if the tenancy agreement contains such a provision. Upon review of the tenancy agreement, I also find the landlord entitled to charge the tenants a late fee of \$25.00 for the month of June 2017. Therefore, I award the landlord a late fee of \$25.00 as requested.

I accept the unopposed evidence before me that the tenants were served with a Notice to End Tenancy and failed to vacate the rental unit pursuant to the 10 Day Notice by remaining in possession of the rental unit until July 9, 2017. I am satisfied the landlord suffered further loss of rent for the month of July 2017 due to the tenants actions. I find the loss of rent is equivalent to the rent the tenants would have otherwise been required to pay had their tenancy continued, which is \$1,140.00 as provided on the Notice of Rent Increase served upon them in March 2017. Therefore, I award the landlord loss of rent of \$1,140.00 for the month of July 2017.

Since the landlord was successful with this application, I further award the landlord recovery of the \$100.00 filing fee paid for this application.

I authorize the landlord to retain the tenants' security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid Rent: June 2017	\$1,100.00
Loss of Rent: July 2017	1,140.00
Late fee: June 2017	25.00
Filing fee	100.00
Less: security deposit	<u>(550.00)</u>
Monetary Order	\$1,815.00

Conclusion

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,815.00 to serve and enforce upon the tenants.

The landlord's claims for damage and/or cleaning are dismissed with leave to reapply.

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 17, 2017

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Residential Tenancy Branch