



# Dispute Resolution Services

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## Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding C. Q. ENTERPRISES LTD  
tenant name suppressed to protect privacy]

### **DECISION**

**Dispute Codes:** FFL MNDCL-S MNDL-S MNRL-S

#### **Introduction**

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

- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation for damage, money owed or losses under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agents, CY and DY, attended the hearing by way of conference call, the tenant did not. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

CY testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on October 24, 2017 by way of registered mail. CY provided a Canada Post tracking number in the hearing. In accordance with sections 88, 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on October 29, 2017, five days after its registered mailing. The tenant did not submit any written evidence for this hearing.

The landlord's agents, in the hearing, confirmed that the landlord wished to withdraw their monetary application for liquidated damages in the amount of \$350.00. Accordingly, this portion of the landlord's application was cancelled.

#### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation for unpaid rent, damage, and losses?

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

#### **Background and Evidence**

The landlord's agent, CY, testified regarding the following facts. This 6 month fixed-term tenancy began on April 15, 2017, and was to end on October 14, 2017. Monthly rent was set at \$750.00, payable on the 15th day of every month. The tenant moved out on October 5, 2017. The landlord collected a security deposit and pet damage deposit in the amounts of \$375.00 each deposit, and continue to hold both deposits. The landlord submitted a copy of the tenancy agreement in their evidence. The tenant provided their forwarding address on the date of move-out.

The landlord is seeking a monetary order in the amount of \$850.00 as set out in the table below:

Item	Amount
Monetary Order for damages as agreed to by the tenant	\$325.00
Unpaid Rent for September 15, 2017 to October 14, 2017	375.00
Late Fees (May 2017 and September 2017 rent-\$25.00 x 2)	50.00
Recovery of Filing Fee	100.00
<b>Total Monetary Order Requested</b>	<b>\$850.00</b>

The landlord's agent, CY, testified that both move-in and move-out inspections were completed, and the tenant had agreed that the landlord may retain \$325.00 of the damage deposit for damages. The landlord submitted a copy of both inspection reports with written confirmation that the landlord may retain \$325.00.

The landlord is also seeking \$375.00 in unpaid rent for the period of September 15, 2017 to October 14, 2017. The landlord testified that the tenant made only a partial payment in the amount of \$375.00 on September 20, 2017 for the last month of this tenancy, and moved out before paying the outstanding rent.

The landlord is seeking late fees in the amount of \$25.00 each for the months of May 2017 and September 2017. The landlord testified that May 2017 rent was paid one day late, and the September 2017 payment was made 4 days late. The landlord submitted, in evidence, copies of the e-transfer receipts which indicate payments made by the tenant on May 16, 2017 and September 20, 2017.

### **Analysis**

I find that it was undisputed that the tenant did not pay the full rent for the period of September 14, 2017 to October 14, 2017. Section 26(1) of the *Act* states that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." The landlord provided a copy of the tenancy agreement in their evidence which indicates October 14, 2017 as the last date of this fixed-term tenancy. As I find the tenant failed to pay the full monthly rent as required by section 26(1) of the *Act* for this period, I find the landlord is entitled to a monetary order in the amount of \$375.00 for the outstanding rent for the last month of this fixed-term tenancy.

The landlord also made a monetary claim for \$325.00 for damages that occurred during this tenancy. Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I note that the landlord had complied with sections 23 and 35 of the *Act* which requires the landlord to perform both move-in and move-out inspections, and fill out condition inspection reports for both occasions. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." I am satisfied that the landlord had provided sufficient evidence to demonstrate that the tenant gave written authorization for the landlord to retain \$325.00 for damages that occurred during this tenancy. Accordingly, I find the landlord is entitled to \$325.00 for damages.

The landlord also made a monetary claim for \$50.00 for two late rent payments made by the tenant. I find that the landlord had provided sufficient evidence to support that the tenant was aware that this late fee would be incurred by the tenant for late rent payments. I find the landlord had provided sufficient evidence to support that the tenant made two late payments during this tenancy.

**Section 7** of the *Residential Tenancy Act Regulation* sets \$25.00 as the limit for NSF and late fees as summarized below:

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

(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.

Accordingly, I find the landlord is entitled to \$50.00 for the two late rent payments.

The landlord continues to hold the tenant's security and pet damage deposit of \$375.00 each. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary claim.

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

### **Conclusion**

The landlord withdrew their application for liquidated damages.

I issue a \$100.00 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent and late fees, the filing fee for this application, and also allows the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary claim. 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.

<b>Item</b>	<b>Amount</b>
Monetary Order for damages as agreed to by the tenant	\$325.00
Unpaid Rent for September 15, 2017 to October 14, 2017	375.00
Late Fees (May 2017 and September 2017 rent-\$25.00 x 2)	50.00
Recovery of Filing Fee	100.00
Less Security and Pet Damage Deposit retained by landlord	-750.00
<b>Total Monetary Order</b>	<b>\$100.00</b>

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: May 24, 2018

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Residential Tenancy Branch