



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            FFL, MNRL-S, OPR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 22, 2018 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 8, 2018 (the "Notice"). The Landlord also sought to recover unpaid rent and reimbursement for the filing fee. The Landlord sought to keep the security deposit.

J.L. appeared at the hearing as agent for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to J.L. who did not have questions when asked. J.L. provided affirmed testimony.

At the outset of the hearing, J.L. advised the Landlord is no longer seeking an Order of Possession as the Tenant vacated the rental unit. J.L. said the Landlord is seeking compensation for the following: \$115.45 for a service call to "repair unit"; \$20.00 for an NSF fee; \$550.00 for unpaid rent; and \$100.00 for the filing fee. J.L. said the Landlord is no longer asking to keep the security deposit as the Tenant agreed the Landlord could keep it in relation to other outstanding rent.

During the hearing, it became apparent the Landlord was now seeking "unpaid rent" for part of July, after the Tenant had vacated the rental unit. I told J.L. I would not consider this as the Application indicated the Landlord was seeking \$900.00 for unpaid rent for May. In my view, the Tenant could not have known from the Application or evidence submitted that the Landlord was seeking \$550.00 in "unpaid rent" for part of July. Further, it was my view that this request for compensation based on the position that the Tenant vacated the rental unit in violation of the term of the tenancy agreement is a separate issue from unpaid rent linked to the Notice. The Landlord is permitted to re-apply for compensation for part of July rent.

It was clear from the Application that the Landlord was seeking compensation for the \$115.45 for a service call and \$20.00 for an NSF fee. Therefore, I considered these issues.

The Landlord had submitted evidence prior to the hearing. I addressed service of the hearing package and Landlord's evidence. J.L. testified that the hearing package and evidence were sent to the rental unit by registered mail May 30, 2018. The Landlord had submitted a Canada Post Customer Receipt with Tracking Number 1 on it. The Customer Receipt is addressed to the Tenant at the rental unit. With the permission of J.L., I looked up Tracking Number 1 on the Canada Post website. The website shows the package was delivered and signed for May 31, 2018. I asked J.L. about the signatory name showing on the website and she testified this is the name of the Tenant's boyfriend who was also living at the rental unit at the time.

Based on the undisputed testimony of J.L., the evidence submitted and the information on the Canada Post website, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). Further, I find the hearing package and evidence were served on the Tenant in sufficient time to allow the Tenant to prepare for, and appear at, this hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. J.L. was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence of the Landlord and all oral testimony of J.L. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to \$115.45 compensation for a service call to repair the unit?
2. Is the Landlord entitled to \$20.00 compensation for an NSF fee?
3. Is the Landlord entitled to reimbursement for the \$100.00 filing fee?

#### Background and Evidence

The Landlord submitted a written tenancy agreement. It is between the Landlord, as agent for two individuals, and the Tenant for the rental unit. The tenancy started November 1, 2017 and was for a fixed term of 12 months ending October 31, 2018. Rent was \$1,100.00 per month due on the first of each month. A \$550.00 security deposit was paid. The agreement is signed on behalf of the Landlord and by the Tenant.

The tenancy agreement includes an addendum that has the following terms:

16. The tenants agree that if a rent cheque is returned due to insufficient funds that the tenants will be responsible to pay a \$20.00 NSF fee which will become immediately due and payable...

17. The tenants understand and agree that if a repair service technician is called to the home at the tenants' request and the cause of the repair/damage was created by the tenant or the tenant's negligence, the tenants will be liable for the entire cost of the service call and/or repairs. If a repair service technician is called to the home at the tenant's request and there was no repair needed during the service call, the tenant will be responsible for the cost of the service call.

The addendum is signed by the Tenant and on behalf of the Landlord.

The Landlord had submitted an invoice from the company that attended the service call. It is for \$115.45. It indicates the washing machine was leaking when in use. It also indicates the issue was the use of too much soap. The invoice is not for parts or labor but for the service call.

J.L. testified that she spoke with the company that attended the service call and the washing machine was not leaking. She said the issue was that the Tenant was using too much soap. She testified that the machine did not need to be repaired. She said the Tenant just had to be told not to use so much soap.

J.L. confirmed the Landlord is seeking a \$20.00 NSF fee for the May rent cheque that was returned. The Landlord had submitted a rent ledger for the Tenant showing the May rent payment was reversed May 4, 2018 and showing the \$20.00 NSF fee from May 4, 2018.

#### Analysis

Section 32(3) of the *Act* states that a tenant must repair damage to the unit caused by their actions or neglect.

Policy Guideline 1 states at page three that landlords are responsible for repairing appliances "unless the damage was caused by the deliberate actions or neglect of the tenant".

Based on the undisputed testimony of J.L., and the invoice for the service call, I find the service call related to the washing machine leaking. I accept that the issue was the Tenant using too much soap based on the undisputed testimony of J.L. and the invoice for the service call. I find the need for the service call resulted from the Tenant's negligence in using too much soap. I find the Tenant liable for the cost of the service call pursuant to section 32(3) of the *Act* and Policy Guideline 1. I find the cost to be reasonable. I find the Landlord is entitled to compensation in the amount of \$115.45 for the service call.

Section 7 of the *Residential Tenancy Regulation* (the "*Regulations*") allows a landlord to charge a tenant "not more than \$25 for the return of a tenant's cheque by a financial institution" if the tenancy agreement provides for this fee.

Term 16 of the tenancy agreement provides for a \$20.00 NSF fee. Based on the undisputed testimony of J.L., and the rent ledger, I accept the Tenant's May rent cheque was reversed. I find the Tenant liable for the \$20.00 NSF fee for the May rent cheque. The Landlord is entitled to compensation in the amount of \$20.00 for the NSF fee.

As the Landlord was successful in this application, I award the Landlord \$100.00 for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$235.45 compensation and I grant the Landlord a Monetary Order in this amount.

### Conclusion

The Landlord is entitled to compensation in the amount of \$235.45 being \$115.45 for the service call, \$20.00 for an NSF fee and \$100.00 for the filing fee.

I grant the Landlord a Monetary Order in the amount of \$235.45. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 18, 2018

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Residential Tenancy Branch