



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCL-S, MNRL-S, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “*Act*”) for monetary compensation for unpaid rent and late rent payment fees, as well as the recovery of the filing fee paid for this application.

The Landlord and the Landlord’s partner (the “Landlord”) were present for the teleconference hearing, while no one called in for the Tenant. The parties were affirmed to be truthful in their testimony. The Landlord stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail.

The Landlord submitted the registered mail information into evidence showing that the package was unclaimed and returned to them. The registered mail tracking number is included on the front page of this decision. Despite not being claimed, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rule of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to a Monetary Order for late payment fees?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided undisputed testimony on the tenancy. The tenancy began in May 2016 for a monthly rent of \$1,300.00, due on the first day of each month. In May 2017, the monthly rent was raised to \$1,348.00. A security deposit of \$650.00 was paid at the outset of the tenancy.

The Landlord was unsure of the exact date that the Tenant moved out but stated that he moved out based on an Order of Possession that was effective November 30, 2018.

The Landlord stated that during preparation for a previous hearing, they noticed that rent had not been paid in February 2017 in the amount of \$1,300.00. They submitted into evidence the bank statements regarding rent payments that show no rent payment made in February 2017.

The Landlord applied for the unpaid rent during a previous hearing regarding a notice to end tenancy, but the matter was dismissed with leave to reapply to focus the hearing on the urgent matter of a notice to end tenancy. The Landlord stated that the Tenant was notified about their claim for the unpaid rent through the evidence and application from the previous hearing, as well as the Landlord's current Application for Dispute Resolution regarding the current hearing.

The Landlord submitted into evidence a statement in which she explains that she was travelling during February 2017 which is why it was not noticed until later that rent was not paid at this time.

The Landlord has also claimed a total of \$320.00 in late payment fees for the 19 months that rent was paid late. The Landlord submitted the tenancy agreement into evidence

and pointed out a clause on the addendum that states a \$5.00 per day late rent payment fee.

The Landlord submitted into evidence the bank statements as well as a document which calculates the total late fees due for each month that rent was paid late. The Landlord stated that they are aware that this fee can be charged to a maximum of \$25.00 for each month that rent was paid late. The late payments claimed by the Landlord begin in August 2016 with the most recent late payment noted as July 2018.

The Landlord stated that they did not pursue the late payments fees at the time, as they were focused on receiving the rent payments each month that rent was paid late.

The Landlord submitted into evidence email exchanges with the Tenant in which the Landlord reminded the Tenant that rent was due for the months had not been received on the first of the month.

The Landlord also submitted into evidence information regarding cleaning and a move-out fee not paid by the Tenant. However, the Landlord stated that as they got possession of the rental unit back only a few days prior to the hearing, they did not have time to serve the Tenant with copies of this evidence, or to submit an amendment. The Landlord was informed that the decision would be regarding only the claims on their Application for Dispute Resolution. Both parties are at liberty to file a new application for any claims that remain outstanding from this tenancy.

### Analysis

I refer to Section 26(1) of the *Act* that states that a Tenant must pay rent when it is due. I accept the testimony of the Landlord, as well as the signed tenancy agreement submitted into evidence that shows that rent is due on the first day of each month. I also find evidence before me of the Landlord's bank statements showing that rent was unpaid for February 2017.

I note that in accordance with rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

Based on the Landlord's evidence and testimony, I find that she has met the burden of proof in establishing that she is owed an amount of \$1,300.00 for February 2017 rent. Pursuant to Section 67 of the *Act*, I award this amount to the Landlord.

The Landlord has also applied for late payment fees in the amount of \$320.00, dating back to 2016. Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge a late payment fee of no more than \$25.00. Section 7(2) of the *Regulation* states that this can only be charged if the tenancy agreement provides for that fee.

The late payment fees are noted in the tenancy agreement, and while set at \$5.00 per day, the Landlord has claimed for a maximum of \$25.00 for each month rent was paid late in accordance with the *Regulation*. However, I find insufficient evidence from the Landlord to establish that these fees were charged to the Tenant during the tenancy and that the Landlord took steps to enforce the late payment fees at the time rent was paid late.

In accordance with Section 7(2) of the *Act*, a party claiming a loss must do what is reasonable to minimize that loss. By not charging the late fees at the time the rent was paid late, I find that the Landlord did not take reasonable steps to minimize the loss. Had the Landlord enforced the late fees at the time the rent was first paid late, the Tenant would have been aware that the Landlord was enforcing this clause of the tenancy agreement, which may have had an influence on whether rent was paid late for future months.

As such, by not enforcing the late payment fees beginning in 2016, I find that the Landlord did not take steps to mitigate any losses that may have occurred, and I decline to award any compensation for late rent payment fees.

As the Landlord was partially successful with the application, I award the recovery of the filing fee in the amount of \$100.00, pursuant to Section 72 of the *Act*.

Pursuant to Section 67 of the *Act*, the Landlord is awarded a Monetary Order for \$1,400.00 for February 2017 rent and for the recovery of the filing fee.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,400.00** for rent owing for February 2017, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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.

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: December 06, 2018

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Residential Tenancy Branch