



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHARTWELL CONSTRUCTION LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCL, MNRL, 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 and/or compensation for damages, compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 22 minutes that the phone line was monitored. The Landlord was affirmed to be truthful in her testimony and 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 testified that the Tenant was served at a forwarding address provided on March 28, 2019. She stated that initially a friend’s address had been provided on the Tenant’s notice to end the tenancy, but on March 28, 2019, the Tenant’s new address was confirmed and provided on the security deposit refund form. The registered mail tracking number was provided in evidence and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was delivered on April 23, 2019. As such, I find that the Tenant was duly served in accordance with Sections 88 and 89 of the *Act*.

### Preliminary Matters

Although the Landlord did not apply to retain the security deposit on the application, it was confirmed during the hearing that it was the Landlord’s intention to apply against the security deposit. As a security deposit is dealt with on a landlord or tenant’s application regarding the security deposit, I do not find that it would unfairly prejudice

the Tenant to amend the application to claim against the deposit as any money remaining in the deposit will be ordered to be returned to the Tenant.

I also find that the Tenant should have reasonably been aware of the Landlord's intent to claim against the security deposit based on the security deposit refund form that was included as evidence. This form outlines the claims against the deposit and although unsigned by the Tenant, the Landlord stated that all evidence was served to the Tenant along with the Notice of Dispute Resolution Proceeding documents.

Therefore, I accept that the Landlord intended to apply against the deposit and that it would not unfairly prejudice the Tenant to proceed with this claim. Pursuant to Section 64(3)(c) of the *Act*, I amend the application to include a claim against the security deposit. Any money found to be owing to the Landlord may be retained from the deposit.

#### Issues to be Decided

Is the Landlord entitled to monetary compensation and/or compensation for damages?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards any compensation owed?

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

#### Background and Evidence

While I have considered the relevant documentary evidence and testimony, not all details of the submissions are reproduced here.

The Landlord provided undisputed testimony regarding the tenancy which was confirmed by the tenancy agreement submitted into evidence. The tenancy began on May 1, 2004. Monthly rent at the end of the tenancy was \$1,504.00 as shown on a Notice of Rent Increase submitted into evidence. Rent was due on the last day of each month. A security deposit of \$473.50 was paid at the outset of the tenancy which the Landlord is still in possession of. The Landlord stated that they would like to retain the deposit towards any compensation found to be owing.

The Landlord stated that the Tenant provided written notice to move out of the rental unit and moved out on March 28, 2019. The Landlord submitted the letter from the Tenant into evidence. Although the letter was dated February 28, 2019, the Landlord testified that it was not received until March 13, 2019 when it was posted in their mailbox. The letter is stamped as received on March 13, 2019. In the letter the Tenant stated that the last day of tenancy will be March 31, 2019.

The Landlord provided testimony that the Tenant and a friend attended the move-out inspection on March 28, 2019 and although the Tenant did not sign agreeing to the condition of the rental unit, he signed agreeing that all of his belongings had been removed from the rental unit. The Condition Inspection Report was submitted into evidence and was signed by the Tenant at move-in on May 1, 2004. The move-out inspection was conducted on March 28, 2019 and notes that cleaning was needed throughout the rental unit.

The Landlord has claimed a total of \$1,965.97. This includes \$11.97 claimed for registered mail costs for mailing the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice"). A copy of the 10 Day Notice was submitted into evidence, dated April 2, 2019. The Landlord explained that the Tenant still owed April 2019 rent, despite moving out on March 28, 2019 due to not providing a full month notice.

The Landlord has also claimed \$1,504.00 in unpaid rent for April 2019. The Landlord stated that as they received the Tenant's notice on March 13, 2019 to end the tenancy at the end of the month, insufficient notice was provided. The Landlord confirmed that this was a month-to-month tenancy.

The Landlord was unsure as to when they began advertising the rental unit for re-rental but stated that it was likely early April 2019. She stated that they advertised on the premises, as well as through two websites. She was unsure as to how much the rental unit was advertised for but stated that they usually increase the rent by approximately \$100.00 or \$200.00. She stated that she believes the unit was re-rented for May 2019.

The Landlord has also claimed a \$25.00 late fee for months in which rent was paid late. As noted on the Monetary Order Worksheet this includes late payments for October 2014, June 2016, September 2016 and December 2016. As the Monetary Order Worksheet notes that a total of \$95.00 is claimed for these late payment fees, the Landlord stated that the amount claimed may include a parking increase fee of \$5.00 or \$10.00. The Landlord pointed out that the tenancy agreement provides for the \$25.00 fee on page three. The Landlord stated that the Tenant was aware of the \$25.00 late

payment fees as they provided him notice each time that the rent amount was due as well as the late payment fee. The Landlord confirmed that they never received the late payment fees.

Although the Landlord was unsure as to exactly why \$95.00 was being claimed, submitted into evidence was an accounts receivable document which shows the four late charges for a total of \$100.00 and a \$5.00 overpayment.

In addition, the Landlord has claimed \$100.00 from a previous dispute resolution proceeding. She stated that at the time they were awarded an Order of Possession based on a 10 Day Notice and a Monetary Order for the \$100.00 filing fee. However, she stated that after service of the Order of Possession on the Tenant, they decided to give him another chance and not enforce the Order. The Landlord stated that they did not receive payment for the \$100.00 filing fee at this time so are claiming it now. The Landlord did not submit the previous decision or Orders into evidence.

The Landlord has also claimed \$170.00 for 8.5 hours of cleaning and stated that the entire rental unit required cleaning at the end of the tenancy, as noted on the Condition Inspection Report. The Landlord stated that as the agent she completed this cleaning and billed the Landlord for the amount claimed, so there is no specific invoice for this. The Landlord has also claimed \$60.00 for 3 hours of cleaning blinds in the amount of \$60.00. The Landlord stated that the blinds were in poor condition after such a long tenancy.

Lastly, the Landlord has claimed \$25.00 for late payment of April 2019 rent and stated that the Tenant did not provide any money towards April 2019 rent, despite not giving sufficient notice to end the tenancy.

### Analysis

Based on the undisputed testimony and evidence of the Landlord, I find as follows:

Regarding the claim for registered mail costs, I decline to award compensation as claimed. Instead, I find that registered mail costs are costs may be incurred by both parties through notices to end tenancy or dispute resolution procedures. I also note that there are other methods of service under Sections 88 and 89 of the *Act* which do not cost money.

Regarding April 2019 rent and \$25.00 late fee, I refer to Section 45(1) of the *Act* which states that at least one full rental month of notice must be provided by the Tenant to end a periodic (month-to-month) tenancy. Although the notice from the Tenant was dated February 28, 2019, I accept the Landlord's testimony and evidence that it was not served to them until March 13, 2019. Therefore, I find that the Tenant was not in compliance with Section 45(1) of the *Act* when notice was provided in the same month the tenancy was ending.

However, as stated in Section 7 of the *Act*, a party claiming a loss must also establish that they took reasonable steps to mitigate their potential losses. The Landlord was unsure as to the details of trying to re-rent the rental unit following the Tenant's notice to end the tenancy. I find that reasonable steps to re-rent would include advertising right away after receiving notice and advertising for a rent that is the same or similar to the rent the Tenant was paying.

The Landlord stated that they likely began advertising in early April 2019, which I do not find reasonable if notice was received on March 13, 2019 to end the tenancy at the end of the month. To minimize potential losses, I find it reasonable that the Landlord would begin advertising as soon as notice was received. The Landlord was also unable to clarify the amount the rental unit was being advertised for. In the absence of evidence that would establish that reasonable steps were taken to minimize potential losses, I am not satisfied that they were. As such, I find that the Landlord has not met the requirements of Section 7 of the *Act*, and I decline to award compensation for April 2019 rent, including the \$25.00 late payment fee.

As for the \$95.00 late fee charges, I accept the evidence before me that shows that the Tenant paid rent late four times, resulting in four late payment fees, along with the return of a \$5.00 overpayment. I accept the testimony of the Landlord that the Tenant was notified on multiple occasions about these fees and that he did not pay. As stated in Section 7 of the *Residential Tenancy Regulation*, a late fee of \$25.00 may be charged as long as the tenancy agreement provides for that fee. Upon review of the tenancy agreement, I find a statement on page 3 that a \$25.00 fee will be charged for overdue accounts. Therefore, I am satisfied that the Landlord is owed \$95.00 and award this amount.

The Landlord has claimed \$100.00 from the filing fee of a previous dispute resolution proceeding. However, I decline to award this amount. First of all, a decision regarding a filing fee is made at the time of the hearing and a new decision cannot be made later. I also note that as the Landlord stated that a Monetary Order was granted for the

\$100.00, that this may be enforced in Small Claims Court and cannot be enforced or awarded again through a new hearing.

Regarding cleaning costs and costs for cleaning the blinds, I find that the Landlord has established that they are entitled to these costs for a total of \$230.00. I accept the testimony of the Landlord that the Tenant was present at the move-out inspection and chose not to sign the move-out report, although he did sign acknowledging the end of tenancy date. However, I find that the Condition Inspection Report notes that areas throughout the rental unit required cleaning as testified to by the Landlord. I also find the amounts claimed by the Landlord to be reasonable and accept that the work was completed herself.

As the Landlord was partially successful with their application, I also award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of \$100.00.

Regarding the Landlord's testimony to retain the security deposit towards compensation owed, I refer to Section 38(1) of the *Act* which states that within 15 days of the later of the date the tenancy ends or the date the forwarding address is provided in writing, the landlord must return the deposit or file a claim against it. As the tenancy ended on March 28, 2019, the same day the forwarding address was provided, and the Landlord filed their application on April 11, 2019, I find that the Landlord was in compliance with Section 38(1) of the *Act*. The Landlord may retain the security deposit towards compensation owed and must return the remainder to the Tenant. I also note that as stated in Section 38(1)(c) of the *Act*, the Landlord must return the security deposit including interest.

As calculated on the Residential Tenancy Branch website, the interest due for the deposit paid on May 1, 2004 is \$16.77. As required by *Residential Tenancy Policy Guideline 17*, a security deposit is dealt with on the landlord's application to retain the deposit or a tenant's application for the return of the deposit. As such, regardless of the Tenant not attending the hearing or filing an application, the Tenant is awarded a Monetary Order in the amount outlined below:

|                                     |                   |
|-------------------------------------|-------------------|
| Return of security deposit          | \$473.50          |
| Interest on security deposit        | \$16.77           |
| <i>Less late fees</i>               | <i>(\$95.00)</i>  |
| <i>Less cleaning of rental unit</i> | <i>(\$170.00)</i> |
| <i>Less cleaning of blinds</i>      | <i>(\$60.00)</i>  |
| <i>Less filing fee</i>              | <i>(\$100.00)</i> |

|                       |         |
|-----------------------|---------|
| Total owing to Tenant | \$65.27 |
|-----------------------|---------|

### Conclusion

The Landlord is awarded compensation as outlined above. This amount may be retained from the security deposit and the remainder of the deposit plus interest must be returned to the Tenant.

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **\$65.27** for the return of the remainder of the security deposit plus interest as outlined above. The Tenant is provided with this Order in the above terms and may be served to the Landlord if the Landlord does not return the deposit within a reasonable timeframe. Should the Landlord 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: July 17, 2019

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Residential Tenancy Branch