



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent/late fees, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served in person on March 14, 2021. I find the tenants were served in accordance with section 89 of the Act. The tenants did not appear.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on November 1, 2017. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenants paid a security deposit of \$550.00 and a pet damage deposit of \$250.00. The tenancy ended on November 30, 2019.

The landlord testified that the tenants were in rent arrears of \$3,410.00 when the tenancy ended. The landlord stated that the tenants were always behind in paying the rent and at times they would catchup. The landlord stated that they had a good relationship with the tenants and thought they were helping them. The landlord seeks to recover unpaid rent in the amount of \$3,410.00. Filed in evidence is a rent ledger.

The landlord testified that because the tenants were late paying rent they are entitled to late fees. The landlord stated that the addendum to the tenancy agreement allows them to collect \$10.00 per day; however, they think that amount is too high, so they are capping the amount to \$30.00 per month. The landlord stated that the tenants have been late 30 times. The landlord seeks to recover late fees in the amount of \$900.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

### **Rules about payment and non-payment of rent**

**26 (1) 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.**

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I accept the undisputed evidence of the landlord that the tenants were in rent arrears for most of their tenancy. This is supported by the rent ledger. I find the tenants breached section 26 of the Act when they failed to pay the full rent due under the terms of their tenancy agreement and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of \$3,410.00.

In this case, I find the landlord's claim for late fees is not in compliance with section 7(1)(d) of the Residential Tenancy Regulation. The evidence of the landlord was that the addendum allows them to collect \$10.00 per day for a late fee. The evidence of the landlord that they have capped that amount to \$30.00. When a term of a tenancy is contrary to the Act, it is unenforceable. Therefore, I dismiss the landlord's claim for late fees.

I find that the landlord has established a total monetary claim of **\$3,510.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord to retain the security deposit of **\$550.00** and pet damage deposit of **\$250.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,710.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 21, 2021

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Residential Tenancy Branch