



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, OLC, RP

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant on May 5, 2022, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order for the Landlord to comply with the Act, regulation, or tenancy agreement; and
- An order for the Landlord to make repairs to the unit, site, or property.

The hearing was convened by telephone conference call at 11:00 AM on September 12, 2022, and was attended by the Tenant, two agents for the Landlord L.M. and C.F. (the Agents), and a witness for Landlord R.L. All testimony provided was affirmed. The Agents acknowledged receipt of the Notice of Dispute Resolution Proceeding (NODRP) package, which contains the Application and the Notice of Hearing, and stated that they had no concerns regarding the method or timing of service. As a result, I find that they were sufficiently served for the purpose of the Act and the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), and the hearing proceeded as scheduled. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The parties were advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The parties were asked to refrain from speaking over one another and to hold their questions and responses until it was their opportunity to speak. The parties were also

advised that pursuant to rule 6.11 of the Rules of Procedure, recordings of the proceedings are prohibited, except as allowable under rule 6.12, and the parties confirmed that they were not recording the proceedings.

I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be mailed to them at the mailing addresses listed for them in the Application.

### Preliminary Matters

#### Preliminary Matter #1

At the outset of the hearing the parties agreed that the Tenant had paid the outstanding rent noted in the 10 Day Notice within the required period set out under section 46(4)(a) of the Act, and therefore the 10 Day Notice which is the subject of this dispute has no effect. As a result, the Tenant's Application seeking cancellation of the 10 Day Notice was dismissed without leave to reapply as the matter has already been dealt with by statutory execution of section 46(4)(a) of the Act. As a result, I turned my mind to the remaining claims of the Tenant in the Application.

Rule 2.3 of the Rules of Procedure states that claims made in the Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. In the Application the Tenant sought multiple remedies under multiple unrelated sections of the Act. As per the Tenant's request, I preceded with the Tenants preferred claim for reimbursement of a \$25.00 late fee and their claim for repairs was dismissed with leave to reapply.

#### Preliminary Matter #2

Although the parties acknowledged receipt of each others documentary evidence, the Tenant argued that they did not have sufficient time to review, consider, and respond to the Landlords documentary evidence as they received it on August 17, 2022, shortly before they were hospitalized. Although the Tenant acknowledged that they were released from hospital on Aug 25, 2022, they stated that they were still in poor health as they had difficulty getting their required medication due to their financial circumstances.

Rule 3.15 of the Rules of Procedure states that respondents must ensure evidence that they intend to rely on at the hearing is served on the applicant as soon as possible, and that this evidence must be received by the applicant not less than seven days before the hearing. Despite the Tenant's statements at the hearing, I find that the Landlord served their documentary evidence on the Tenant well in advance of both the date of the hearing and the deadline for service of evidence set out under rule 3.15. As the Tenant acknowledged that they received this evidence on August 17, 2022, and were released from hospital on August 25, 2022, and in the absence of any documentary or other evidence to corroborate the Tenant's testimony that they were medically unable to review, consider, and prepare any necessary response to the Landlord's documentary evidence, I am therefore satisfied on a balance of probabilities that the Tenant had sufficient time to review, consider, and prepare any necessary response to the Landlord's documentary evidence and that as such, no remedy or action is required in order to provide a fair opportunity for the Tenant to be heard.

I therefore accepted the documentary evidence before me from the parties for consideration.

### Preliminary Matter #3

Although I advised the parties that pursuant to section 63 of the Act, I could assist them in reaching a settlement agreement, should they wish to engage in settlement discussions, the Agents declined, stating that as the Tenant's behavior toward agents for the Landlord had recently been inappropriate, they did not think settlement was an appropriate option.

Although the Tenant denied the Agents' testimony that they had behaved inappropriately and stated that the Agents were committing fraud by alleging as such, I advised the parties that there is no obligation to engage in settlement discussions or to agree to a settlement, and that the Agents had a right to decline to engage in settlement discussions for any reason.

As a result, the hearing proceeded, and I have rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Tenant entitled to reimbursement of a \$25.00 late fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one-year fixed term tenancy commenced on July 1, 2016, and became month to month at the end of the fixed term on June 30, 2017. The tenancy agreement states that rent in the amount of \$785.00 is due on the first day of each month and the security deposit in the amount of \$392.50 was required. The tenancy agreement was signed on July 30, 2016. The parties agreed that the tenancy agreement in the documentary evidence before me is accurate, except for the amount of rent, which is currently \$872.00, as rent has increased since the start of the tenancy.

The parties agreed that rent for May of 2022 was paid by the Tenant at approximately 4:00 PM on May 2, 2022. The Tenant stated that in the days leading up to May 1, 2022, the day in which rent for May was due under their tenancy agreement, they were in severe pain, and therefore were not aware of the calendar date. The Tenant stated that on the morning of May 2, 2022, they realized that rent had been due the previous day and went to the office to pay their rent at approximately 10:00 AM. The Tenant stated that no one was in the office, and they could not call the phone number listed as they did not have access to a phone in their rental unit at that time. As a result, the Tenant stated that they chose to return to their rental unit and come back to the office later in the day. The Tenant stated that at approximately 4:00 PM they located an agent for the Landlord vacuuming the hallway and paid their rent.

While the Tenant acknowledged that the Landlord have the legal right to charge a late fee, they argued that the Landlord's application of any late fee in this case was unethical and punitive in nature and that the principle of "mercy above justice" should apply. The Tenant argued that given the amount of rent collected from tenants for the building, the Tenant's health complications, and the Tenant's financial circumstances, it was therefore unethical for the Landlord to charge them a \$25.00 late fee, which has placed them in a very difficult financial situation given that they are on a fixed income. The Tenant also argued that the late fee should not apply as an agent for the Landlord was not present in the office at 10:00 AM when they attempted to first pay their rent on May 2, 2022. Finally, the Tenant also argued that the Landlord is charging them the \$25.00

late fee as a penalty for their alleged inappropriate behavior, which constitutes fraud and a felony as they have not engaged in any inappropriate behavior.

The agent for the Landlord C.F. denied charging the Tenant the late fee for any other reason than the late payment of rent and pointed to section nine of the tenancy agreement in the documentary evidence before me which states that the tenant must pay the rent on time unless the tenant is permitted under the Act to deduct from the rent. C.F. also pointed to section 19 of the tenancy agreement in the documentary evidence before me which states that late payment or returned checks are subject to an administrative fee of not more than \$25.00 each, plus any service fees charged to the Landlord by a financial institution.

C.F. stated that the tenancy agreement clearly allows the Landlord to charge the tenant a \$25.00 late fee if rent is not paid in full and on time, and that rent would still have been considered late at 10:00 AM on May 2, 2022, when the Tenant first attempted to pay rent for May of 2022. Further to this, C.F. stated that prior to the current Landlord's purchase of the building on April 1, 2022, all tenants were provided with the option to sign up for direct rent payments, and that those who did were provided with a small rent credit. C.F. stated that when the Landlord purchased the building, they also significantly increased the available office hours on site. As a result of the above, C.F. stated that the Tenant had ample opportunity to pay their rent on time either on site or through the direct payment process.

### Analysis

Section 26 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 the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the act to deduct all or a portion of the rent.

Under the Act, there are five situations in which a tenant may deduct or withhold money from the rent as follows:

1. The tenant has an arbitrator's decision allowing the deduction.
2. The landlord illegally increases the rent.
3. The landlord has overcharged for a security or pet damage deposit.
4. The landlord refuses the tenant's written request for reimbursement of emergency repairs.
5. The tenant has the landlord's written permission allowing a rent reduction.

As no evidence was presented by the parties that any of the above noted criterion apply, I therefore find that they do not and that the Tenant was therefore obligated to pay their rent on time and in full. Based on the affirmed testimony of the parties and the documentary evidence before me, I am satisfied rent is due on or before the first day of each month under the tenancy agreement, and that the Tenant did not pay rent for May of 2022 until approximately 4:00 PM on May 2, 2022. As a result, I find that the Tenant paid rent late for May of 2022.

Section 7(1)(d) of the regulations states that a landlord may charge an administrative fee of not more than \$25.00 for late payment of rent, but only if the tenancy agreement provides for that fee. At the hearing the parties agreed that the tenancy agreement in the documentary evidence before me is accurate and as the tenancy agreement provides for a \$25.00 late fee under section 19, I therefore find that the Landlord was entitled to charge the Tenant a \$25.00 late fee when they failed to pay rent on time in May of 2022.

Based on the above, I therefore dismiss the Tenant's claim for reimbursement of the \$25.00 late fee for charged in May of 2022, without leave to reapply.

### Conclusion

The Tenant's claim for reimbursement of a \$25.00 late fee charged in May of 2022, is dismissed without leave to reapply.

As set out in the Preliminary Matters section of this decision, the Tenant's claim for cancellation of a 10 Day Notice is also dismissed without leave to reapply, as the matter has already been resolved, and their claim for repairs is dismissed with leave to reapply.

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: September 13, 2022

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Residential Tenancy Branch