



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Remax Little Oak Realty Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order of possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, despite each of the tenants being served with the landlord's application, evidence and notice of hearing documents by registered mail on August 22, 2014, no one for the tenants attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenants were served on that date and in that manner and has provided the Canada Post registered mail receipt containing tracking numbers, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the landlord's agent advised that the tenants have vacated the rental unit, and the landlord therefore withdraws the application for an order of possession.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent?

- Should the landlord be permitted to keep all or part of the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 1, 2013 and was to expire after one year on October 31, 2013. The landlord's agent testified that an error exists in the tenancy agreement, and the fixed term ought to show that it expires on October 31, 2014. After the first year, the tenancy reverts to a month-to-month tenancy. The tenancy agreement specifies the landlord company and one of the tenants named in the landlord's application. The tenants vacated the rental unit without any notice to the landlord, and the landlord's agents became aware of it when the tenant's mother dropped off the keys on September 11, 2014 and advised that the tenants had already moved out.

Rent in the amount of \$1,200.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord and no pet damage deposit was collected.

The landlord's agent further testified that the tenants paid rent late for several months and they are currently in arrears the amount of \$3,075.00 which includes late fees and N.S.F. fees. A copy of a tenant ledger has also been provided which runs from January to August, 2014. The tenancy agreement contains an addendum which states that all returned cheques are subject to a \$25.00 fee, as well as a late rent fee of \$5.00 per day to a maximum of \$25.00 per month.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy has been provided, and it is addressed to both tenants and is dated August 7, 2014. The notice states that the tenants failed to pay rent in the amount of \$2,475.00 that was due on August 1, 2014 and contains an expected date of vacancy of August 17, 2014. The landlord claims the sum of \$3,075.00 for unpaid rent and late fees, and an order permitting the landlord to keep the \$600.00 security deposit in partial satisfaction. The tenants have not provided a forwarding address.

### Analysis

Firstly, I find that only one of the tenants named in the landlord's application has entered into a tenancy agreement with the landlord, and the other tenant, A.L. may have been an occupant, but is not a tenant, and I dismiss the claim as against that tenant.

The regulations to the *Residential Tenancy Act* specify what fees a landlord may charge with respect to late fees and returned cheque fees:

**Non-refundable fees charged by landlord**

**7** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and the tenant ledger and I am satisfied from the evidence that the remaining tenant, S.L.M. entered into a tenancy agreement with the landlord and is in arrears of rent the sum of \$2,400.00 for the months of July and August, 2014. I also find that the landlord has established a claim for the late fees but has not provided any evidence of the fee charged by the financial institution for returned cheques, and the landlord is entitled to recover \$75.00 for late fees for February, July and August, 2014 from the tenant. I am also satisfied that the tenant did not advise the landlord of the tenant's intention to move out of the rental unit and the landlord became aware of it when the tenant's mother dropped off the keys on September 11, 2014. I therefore find that the landlord is entitled to one month of rent and late fees in the amount of \$1,225.00.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord to keep the \$600.00

security deposit in partial satisfaction of the claim for unpaid rent and I grant the landlord a monetary order for the difference in the amount of \$3,150.00.

### Conclusion

For the reasons set out above, the landlord's application for an order of possession is hereby dismissed as withdrawn.

The landlord's application as against the tenant, A.L. is hereby dismissed without leave to reapply.

I hereby order the landlord to keep the \$600.00 security deposit and I grant a monetary order in favour of the landlord as against the tenant, S.L.M. pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,150.00.

This order is final and binding and may be enforced.

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: October 08, 2014

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Residential Tenancy Branch

