



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlords' two applications pursuant to the *Residential Tenancy Act* ("the Act") for:

- an Order of Possession for Unpaid Rent and an order of Possession for Cause pursuant to section 55;
- a monetary order for unpaid utilities and a monetary order for damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties (two landlords and two tenants) attended at the hearing and were given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter: History of Dispute and Amendment after Adjournment of Hearing

This hearing was reconvened after an adjournment of a previous Residential Tenancy Dispute Resolution hearing on April 13, 2015. An interim decision with respect to the adjournment proceedings dated April 17, 2015 allowed an opportunity to the tenants to review submissions by the landlords that were not properly served and submit any response.

The landlords originally applied to recover \$1500.00 in unpaid rent from the tenants, testifying that they did not pay rent in the month of March 2015. Landlord SC testified that, after this hearing was adjourned, she attempted to amend her application to include the recovery of an additional \$812.11 in outstanding utilities owed by the tenants.

Landlord SC testified that, after the adjournment of the hearing, she submitted a further package of materials and an amended application, seeking to increase the amount of

the monetary order she sought at the original hearing. Dispute Resolution Rules of Procedure with respect to Residential Tenancy Branch Hearings states, at Rule 2.11 that

The applicant may amend the application without consent if the dispute resolution hearing has not yet commenced.

***(emphasis added)***

This hearing commenced on April 13, 2015 based on two separate applications submitted by the landlords on March 6, 2015 and March 9, 2015 respectively. At the commencement of the first hearing and the application by the tenants to adjourn the hearing, submissions were made by both parties. At the previous hearing, Landlord BC did not refer to an amending his application.

I also note that, to ensure a fair and effective hearing process, an Arbitrator will consider whether the amendment is based on material that was available to the party prior to the date of submission and application for that amendment. In this case, the landlords' new materials are all dated prior to the original hearing date and commencement of this dispute resolution hearing. The landlords did not dispute that the materials submitted to amend their application were available at an earlier date, prior to the commencement of this hearing. However, the landlords chose not to submit the materials prior to the April 13, 2015 hearing and instead provided the materials well after this original hearing date. I consider the full claim including the amendment sought by the landlords only based on the testimony of the tenants acknowledging an outstanding amount owed in utility bills.

I make reference here to my interim decision. At that time, I made the following determinations:

I find that the landlord has been neglectful in both providing the required documents to the tenants and providing proof of any service of documents to the tenants.

Based on the evidence before me at this hearing, I find the landlords' amended claim is again submitted with neglect for the rules of procedure. However, given that the tenants have acknowledged an amount owing to the landlords for utilities, I allow the landlords' amendment to their monetary application.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award for damage or loss arising out of this tenancy? Are the landlords entitled to a monetary award for unpaid utilities arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants'

security deposit towards any monetary award? Are the landlords entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

This tenancy began as a fixed term on November 1, 2014. The rental amount of \$1500.00 was payable on the first of each month. The landlords both agreed that they continue to hold a \$750.00 security deposit paid September 28, 2014 and a \$750.00 pet damage deposit paid October 15, 2014. The tenants testified that they vacated the rental unit on March 28, 2015 and the landlords testified the unit was vacant as of March 31, 2015.

The landlords originally applied to recover \$1500.00 in unpaid rent from the tenants, testifying that they did not pay rent in the month of March 2015. The tenants confirmed that they owed this amount of rent to the landlords. The landlord provided receipts and her calculation of the appropriate portion of the utility bills for the tenants to pay. The tenants testified candidly regarding both the outstanding rent and the outstanding utilities. They testified that their only dispute was with the amounts calculated by the landlord with respect to utilities. The tenants submitted that they owe an additional \$530.79 based on their calculations of the bills. The tenants also testified that they had made some payments towards the outstanding utilities. Landlord SC acknowledged these payments after they were raised by the tenants.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this hearing, based on the acknowledgement of the tenants, the landlords have shown that the tenants owe rental arrears in the amount of \$1500.00. The landlords are entitled to a monetary order including \$1500.00 in unpaid rent from the tenants.

With respect to the landlords' claim for utilities, the landlords again bear the burden of proof both with respect to establishing the existence of loss, the responsibility of the

other party and clear and understandable evidence to verify the actual monetary amount of the loss or damage. The testimony of the tenants in acknowledging an outstanding amount of \$530.79 is the best evidence that has been submitted with regard to the utility bills. The landlords submitted several bills and handwritten calculations on those bills. Those materials alone are confusing in clearly identifying an amount outstanding and owed by the tenants. When the tenants testified that they made some payments towards utilities to the landlords, Landlord SC acknowledged these payments. In all the circumstances, I find the tenants owe the amount that they have acknowledged as outstanding, \$530.79.

With respect to the security deposit and pet damage deposit, section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposits. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposits, and the landlord must return the tenant's security deposit and pet damage deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security and pet damage deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address.

In this case, Landlord SC testified that, while she had sent correspondence to the tenants with respect to her application and confirmed in her testimony that she received the forwarding address from the tenants in at least one form, she submitted that she had not received the forwarding address in writing as required under the *Act*. Therefore, Landlord SC submitted that her requirement to return the tenants' security and pet damage deposit or to apply to retain the deposit had not yet been triggered.

I accept the testimony of both tenants that they provided their forwarding address on September 30, 2015. I accept that their provision of the forwarding address adhered to both the intent and the spirit of the *Act*. However, I also accept Landlord SC's submission that, as she had not been provided with the tenants' forwarding address in writing, she was not required to either return the tenants' security or pet damage deposit or apply for its retention by October 15, 2015. The landlords filed an Application for Dispute Resolution on November 24, 2015: approximately 55 days after the tenants provided their forwarding address to the landlords orally.

In accordance with section 72(2) of the *Act* that allows the landlord to retain a tenant's security and pet damage deposit in the event that the tenants owe a monetary amount

to the landlord, I find that the landlord is therefore entitled to retain the \$750.00 security deposit and \$750.00 pet damage deposit as well as any interest payable for the duration of the tenancy to partially satisfy the monetary award issued in their favour.

As the landlords have been successful in this application, I find that they are also entitled to recover the \$50.00 filing fee from the tenants.

### Conclusion

The landlords withdrew their original application for an Order of Possession. Therefore, that application is withdrawn.

I allow the landlords' application for an amendment to their application and grant the landlords a monetary order as follows;

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$1500.00
Unpaid Utilities	530.79
Less Security Deposit	-750.00
Less Pet Damage Deposit	-750.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$580.79</b>

The landlords are provided with these Orders in the above terms and the tenants must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 16, 2015

---

Residential Tenancy Branch