



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, FF, CNR, OLC, RP

### Introduction

This hearing dealt with applications by both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- a Monetary Order pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenants sought:

- cancellation of a 10 Day Notice to End Tenancy pursuant to section 46;
- an Order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- an Order that the landlords perform repairs pursuant to section 33.

The tenants did not attend this hearing which lasted approximately 20 minutes. The landlord MLT attended representing both landlords (the “landlord”) and was given a full opportunity to be heard, present sworn testimony and make submissions.

The landlord testified that the landlord’s application for dispute resolution dated April 28, 2017 was served on the tenants by registered mail on April 29, 2017. The landlord provided Canada Post tracking numbers as evidence of service. I find that the tenants were deemed served in accordance with section 89 and 90 of the Act on May 4, 2017, five days after mailing.

### Issue(s) to be Decided

Are the landlords entitled to a monetary order as claimed? Are the landlords entitled to recover the filing fee for their application from the tenants?

Are the tenants entitled to any of the relief sought in their application?

### Background and Evidence

The landlord provided undisputed evidence. The landlord said that this tenancy ended on April 4, 2017. The landlord seeks a monetary award in the amount of \$23,900.00.

The landlord alluded to a settlement reached at an earlier hearing and said that written submissions and documentary evidence were submitted for that application. The landlord said that the co-landlord has more knowledge about this tenancy. The landlord was unable to explain how the amount of the monetary award sought is calculated. The landlord gave contradictory evidence about the rent for this tenancy, initially saying that the rent is \$1,750.00 monthly and later suggesting that it was \$1,700.00. The landlord said that the monetary award sought represents unpaid rent, bailiff fees and rubbish removal. The landlord did not submit any written evidence in support of the claim.

### Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Parenthetically, I note that the landlord provided undisputed evidence that this tenancy has ended and the tenants have vacated the rental unit. The application submitted by the tenant seeks relief that pertain to an ongoing tenancy.

As the tenants failed to attend the hearing I dismiss the tenants' entire application without leave to reapply.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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.

I find there is insufficient evidence in support of the landlords' application. The landlord testified that there is an arrears but was unable to provide details of the arrears or conclusively state what the monthly rent was. I find there is insufficient written evidence in support of the landlords' claim. Evidence that was submitted in the past for a separate application has no bearing on the present application. As the applicant, the landlords have the onus of providing evidence in support of their claim. The landlord gave vague, contradictory testimony. The landlords did not provide sufficient evidence regarding the cost of rubbish removal or bailiff fees. I find that the landlords have not met the burden of proof showing there has been a loss. Consequently, I dismiss the landlord's application for a monetary award.

As the landlords' application was not successful the landlords are not entitled to recover the filing fee for their application.

### Conclusion

The tenants' application is dismissed without leave to reapply.

The landlords' application is dismissed without 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 27, 2017

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Residential Tenancy Branch