



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPB OPR O MNDC RR CNR FF

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities, and for breach of an agreement with the landlord; and
- other unspecified relief

The tenants applied for:

- a cancellation of the landlord's notice to end tenancy pursuant to section 55 of the *Act*;
- a Monetary Award for damage or loss under the tenancy pursuant to section 67 of the *Act*;
- an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 65 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both of the tenants and the landlord appeared at the hearing. All parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants acknowledged receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") on approximately August 17, 2017. Pursuant section 88 of the *Act*, the tenants are found to have been served with the 10 Day Notice in accordance with the *Act*.

Both of the tenants and the landlord acknowledged receipt of each other's applications for dispute resolution. I find that all parties were duly served with the other's application for dispute resolution. Evidentiary packages were sent by way of Canada Post Registered Mail to the tenants, while no evidence was supplied by the tenants to the landlord. Pursuant to section 88 of the *Act* the tenants are found to have been served with the landlord's evidentiary package.

Following introductory remarks, the tenants explained that they had vacated the property on September 16, 2017 and were therefore no longer challenging the notice to end tenancy, or seeking an order allowing them to reduce rent. As the landlord would not be unfairly prejudiced by this amendment and pursuant to section 64(3)(c) of the *Act* I amend the tenants application to reflect this request.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Are the tenants entitled to a monetary award?

Can the tenants recover the filing fee?

### Background and Evidence

This was a fixed term tenancy that began on August 15, 2014 and was set to expire on August 15, 2017. Rent was \$2,500.00 per month and a security and pet deposit of \$1,250.00 each continue to be held by the landlord.

The landlord explained that he was seeking a Monetary Order of \$2,572.50 because he said that the tenants overheld in the rental unit until September 16, 2017. A review of his application for dispute resolution indicates that the landlord has not applied for a Monetary Award; however, a Monetary Order Worksheet was sent to the tenants by way of Canada Post Registered Mail on August 28, 2017.

The tenants acknowledged that they were in the rental unit until September 16, 2017 and they said that they had asked the landlord to retain the security deposit in lieu of payment for September 2017.

At the hearing the tenants explained that they have applied for a monetary award of \$2,500.00 for loss they say they experienced under the tenancy because of a flood that occurred in October 2015, as well as for lawn maintenance tenant R.M. said she was forced to complete due to the terms of their tenancy agreement, and because of the loss of their backyard for 1.5 months in August 2016.

Specifically, the tenants said that a flood had occurred in October 2015 which resulted in the underlay of the carpet needing significant attention. The tenants hired a carpet cleaner to assist them with the repairs for which they were not reimbursed by the landlord. Additionally, the tenants said they suffered a loss as a result of the large amount of yard work that was required by their tenancy agreement. Tenant, R.M. explained that she had to cut the grass approximately every four days, and was required to pull weeds from the flower beds every week or so. The tenant said that when she failed to do this, the female landlord would come and berate her for failing to perform yard maintenance as per the terms of the tenancy agreement.

The final aspect of the tenants' application for a monetary award concerns a wedding that the landlord arranged to take place in the backyard of the property in August 2016. The tenants said that they did not have the use of their backyard for 1.5 months because of numerous trucks, tractors and other heavy equipment that was in the yard before, during and after the wedding.

The landlord disputed that any money was owed under the tenancy agreement. He said that tenants had not provided an invoice speaking to the loss they suffered in October 2015, therefore it was impossible to determine if any loss had occurred. Furthermore, he disputed the tenants' characterization of their obligations regarding gardening. The landlord said that his wife would never have scolded the tenants for not doing routine yard maintenance and that there was no expectation that they would weed or cut the grass every four days. Finally, the landlord argued that the tenants had over-exaggerated their loss of the backyard. He explained that the property shared a large backyard with the neighbouring property, and that various items had been stored on the property for the entire length of the tenancy. He said that the

wedding to which the tenants are referring took place over a two-day period; however, outside of this period, the tenants were free to use the backyard.

### Analysis

I find that the landlord has failed to apply for a monetary award under the *Act*. The landlord's application contains only an application for an Order of Possession. Evidence was produced at the hearing that the landlord sent the tenants a Monetary Order Worksheet; however, no amendment to his original application was ever filed with the *Residential Tenancy Branch*. At the hearing the tenants explained that they had granted the landlord permission to retain the security deposit for the unpaid rent of September 2017. Once again, the landlord has not applied to retain the tenant's security deposit. While the tenants may have testified that some form of permission was granted to the landlord, section 38(4)(a) only allows a landlord to retain an amount from a security or pet deposit if at the end of the tenancy, the tenant agrees in writing that the landlord may retain the amount to pay. No evidence was submitted to the hearing by either party that any written permission was given by the tenants to the landlord, to withhold their security deposit. The LL's application for a monetary order is accordingly dismissed.

As the tenants have vacated the rental unit, the landlord's application for an Order of Possession is moot and is therefore dismissed.

The tenants have applied pursuant to section 67 for a monetary award of \$2,500.00. 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 case, the onus is on the tenants to prove their entitlement to a claim for a monetary award.

Only oral testimony was provided to the hearing concerning their application for a monetary award. No physical evidence such as photographs, written submissions, receipts or invoices was submitted with their application for dispute resolution. Furthermore, no breakdown in the amount of money they were seeking for the loss which they purported to have suffered as a result of costs associated with carpet cleaning, yard maintenance and the loss of the backyard was submitted to the hearing or the landlord. I find that insufficient evidence was presented by the tenants regarding their claim for a monetary award. No invoice detailing the costs associated with the repair of a carpet in October 2015 was supplied, nor was a breakdown of the costs they incurred. Furthermore, the tenants failed to explain how they arrived at a figure of \$2,500.00 related to the rest of their claim. Furthermore, the landlord's testimony cast some doubt as to whether yard maintenance was required at the level claimed or that the tenants did not have use of the back yard for an extended period. For these reasons, I dismiss the tenants' application for a monetary award.

As the tenants were unsuccessful in their application, they must incur the cost of their own filing fee.

### Conclusion

The landlord's application for an Order of Possession is dismissed.

The tenants' application for a monetary award and a return of the filing fee is dismissed.

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: November 6, 2017

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Residential Tenancy Branch