



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **Landlord** – OPRM-DR, FFL  
                                 **Tenant** – CNR, MT, RR, FFT

### Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlord sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlords and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Landlord J.D. (the landlord) and Tenant G.S. (the tenant) indicated that they would be the primary speakers during the hearing.

While I have turned my mind to all the documentary evidence, including witness statements and the testimony of the parties, only the relevant portions of the respective submissions and/or arguments are reproduced here.

Both parties acknowledged receipt of each other's Application for Dispute Resolution (the Application) and evidence which were sent by registered mail. In accordance with sections 88 and 89 of the Act, find that all parties are duly served with each other's Applications and evidence.

### Preliminary Matters

At the outset of the hearing the landlord testified that the tenants have moved out of the rental unit as of November 30, 2018, and that they now have possession of the rental unit. The landlord requested to withdraw their Application for an Order of Possession.

The landlord's request for an Order of Possession is withdrawn pursuant to section 64 of the Act.

The tenants confirmed that they have moved out of the rental unit. As the tenants have moved out of the rental unit, I dismiss the tenants' Application to cancel the 10 Day Notice and for more time to cancel the 10 Day Notice, without leave to reapply.

### Issue(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to authorization to recover the filing fee for this application from the landlord?

### Background and Evidence

Written evidence was provided by the landlord that this tenancy began on July 01, 2018, with a monthly rent of \$1,900.00, due on the first day of the month, and a security deposit in the amount of \$950.00 which the landlords continue to retain.

The landlord also provided a copy of the 10 Day Notice dated November 06, 2018, and identifying \$1,900.00 in unpaid rent.

The tenant provided in evidence:

- A copy of a written account of events describing multiple issues with the tenancy including an incident in which the sink was plugged and they felt the landlord was difficult to deal with in getting the situation resolved; and
- A picture of a clogged sink.

The landlord testified that the tenants did not pay the monthly rent for November 2018 and submitted that they are seeking to recover the unpaid rent for this month. The landlord stated that the tenants contacted them about a clogged sink and he authorized them to call a plumber and offered to pay for it.

The tenant confirmed that they did not pay the monthly rent for November 2018 due to numerous issues during the tenancy including a clogged sink which they stated the landlord was difficult to deal with about.

### Analysis

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 7 (2) of the *Act* states that a landlord who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, *Regulations* or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 65 of the *Act* allows for past or future rent to be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement for services or facilities agreed upon but not provided. I find that the tenants bear the burden to prove that they are entitled to a rent reduction due to services or facilities agreed upon but not provided.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Having reviewed the evidence and affirmed testimony, I find that the tenants have not provided sufficient evidence of their communications with the landlord which would

demonstrate that the landlord did not respond to the issue with clogged sink in a reasonable manner and timely fashion.

I further find that the tenants have not provided sufficient evidence to demonstrate that they have mitigated any reduction in the value of the tenancy by addressing any deficiencies in writing and allowing the landlord a reasonable time to deal with the issues. For the above reasons I find that the tenants have not sufficiently proven that they have suffered a reduction in value of their tenancy agreement due to services or facilities agreed upon but not provided and I dismiss their claim without leave to reapply.

As the tenants have not been successful in their Application, I dismiss their request to recover the filing fee, without leave to reapply.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

I find the tenant did not provide any evidence that they were entitled to deduct any amounts from their rent for November 2018 or otherwise had legal authority under the *Act* to withhold the monthly rent.

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.

Based on the written evidence and the affirmed testimony, I find the landlords are entitled to a monetary award of \$1,900.00 for unpaid rent owing for this tenancy for November 2018.

Although the landlords' application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords have been successful in this application, I also allow them to recover their filing fee from the tenants.

Conclusion

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee:

<b>Item</b>	<b>Amount</b>
Unpaid November 2018 Rent	\$1,900.00
Less Security Deposit	-950.00
Filing Fee for this application	100.00
<b>Total Monetary Order</b>	<b>\$1,050.00</b>

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order 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: December 21, 2018

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Residential Tenancy Branch