



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF, LAT, LRE, OPT, MNDC

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for cause pursuant to section 55;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order of possession of the rental unit pursuant to section 54;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent, M.N. (the landlord) and the named tenant, R.S. attended the hearing via conference call and provided testimony. The named tenants, S.V. and S.V. did not attend and were unrepresented.

At the outset, both parties clarified that possession was no longer required as the tenancy has ended. The landlord's application for dispute was cancelled. The tenant also confirmed that as the tenancy had ended that the only remaining issue to be resolved is the tenants' monetary claim. As such, the hearing proceeded only on the tenants' monetary claim.

Both parties confirmed the tenants served the landlord with the submitted documentary evidence via courier on May 10, 2019 and again with a second package on May 22, 2019. The landlord stated that the submitted documentary evidence was served to the tenant by sliding it underneath the rental unit door. The tenant disputed this stating that no documentary evidence has been received. The landlord was unable to provide any proof of service or the date on which the service was done. I find that the tenants have properly served the landlord with the submitted documentary evidence as per sections 88 and 89 of the Act. I find that as the tenants have disputed receiving the submitted documentary evidence via sliding it under the door that the landlord has failed to provide sufficient evidence of service. As such, the landlord's documentary evidence is excluded from consideration in this hearing, but the landlord is free to provide direct testimony on any evidence.

The landlord made a request to adjourn the hearing due to the landlord's documentary evidence being excluded. The landlord seeks another opportunity to re-serve the tenants. I find in the circumstances that the landlord did have a opportunity to properly serve the tenants with the submitted documentary evidence and that an adjournment is not required. The landlord was unable to provide sufficient details of how the excluded documentary evidence was relevant to the tenants' monetary claim. The request for adjournment is denied.

#### Issue(s) to be Decided

Are the tenants entitled to a monetary claim for money owed or compensation and recovery of the filing fee?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 1, 2018 on a fixed term tenancy ending on June 30, 2019 as per the submitted copy of the signed tenancy agreement dated June 14, 2018. The end of tenancy was stipulated and agreed to by both parties for the landlord's son to occupy the rental unit. The monthly rent is \$3,200.00 payable on the 1<sup>st</sup> day of each month and a security deposit of \$1,600.00 was paid on June 14, 2018.

The tenants seek a monetary claim of \$1,550.00 which consists of:

\$262.50	Hired Representative
\$651.00	Temporary Accommodation
\$100.00	Key Fob Replacement
\$399.95	Emergency Expenses

The tenants claim that the landlord deactivated all but one of the 7 fob keys requiring the tenants to obtain temporary accommodations for 1 night on May 7, 2019, purchase emergency supplies, order new key fob and retain representative services. The tenants submitted copies of receipts for each of the above noted claims. The tenants seek recovery of temporary accommodations for 1 night at two difference locations and the cost of emergency supplies (food and clothing totalling \$399.95). The tenants seek recovery of \$100.00 for the purchase of a key fob replacement as shown by the submitted copy of the receipt dated May 3, 2019 and costs to retain representative services for the dispute.

The landlord disputes the tenants' claims stating that the tenants have contravened the signed tenancy agreement and the strata bylaws by providing short term rentals similar to AirBnB. The landlord argued that the tenants receipt was fraudulent but that no evidence to support this claim is available. The landlord stated that at the beginning of the tenancy the tenant was provided 2 fob keys for entry to the rental building. The landlord clarified that only 6 of the key fobs were deactivated and 1 was left active. The landlord stated as such that the tenant still had access and that temporary accommodations, emergency supplies, etc. was not necessary.

### 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. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the tenants seek monetary compensation totalling, \$1,550.00 for:

\$262.50	Hired Representative
\$651.00	Temporary Accommodation
\$100.00	Key Fob Replacement
\$399.95	Emergency Expenses

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the tenants' claim for recovery of litigation costs (Hired Representative) is dismissed.

On the remaining claims, I find that the tenants have failed. The primary argument by the tenants' are that all key fob access was "terminated" at the request of the landlord to the Strata Property Management and that as such the tenant had no ability to access the rental unit. I also note that the tenant provided no evidence of any attempts to contact the landlord at the emergency contact to gain access. On this basis, I find that the tenants' application is dismissed.

### Conclusion

The tenants' 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: June 13, 2019

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Residential Tenancy Branch