



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          OPRM-DR, FFL

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 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 tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

Landlord LYL (the landlord) gave undisputed sworn testimony supported by written evidence that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was placed in the tenant's mail slot on May 7, 2019. I find that the tenant was deemed served with this Notice in accordance with section 88 and 90 of the *Act* on May 10, 2019, the third day after it was placed in the tenant's mail slot. The landlord gave undisputed sworn testimony that a copy of the landlords' dispute resolution hearing package and written evidence was handed to the tenant on May 30, 2019. The landlord testified that the tenant threw this package away when it was handed to the tenant. Based on the landlord's undisputed sworn testimony, I find that the tenant was served with this material in accordance sections 88 and 89 of the *Act* on May 30, 2019, as declared by the landlord.

At the commencement of this hearing the landlords testified that the tenant vacated the rental unit on May 31, 2019. As they already have possession of the rental unit as of that date, they withdrew their application for an Order of Possession based on the 10 Day Notice. The landlords' application for an Order of Possession is hereby withdrawn.

Issues(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?

Background and Evidence

The landlords entered into written evidence a copy of a one year fixed term Residential Tenancy Agreement (the Agreement) signed by the parties, including a former co-tenant who vacated the premises prior to this tenancy ending, on January 19, 2018. When the initial term of the Agreement ended, this tenancy continued as a month-to-month tenancy. Monthly rent was set at \$2,300.00, payable in advance on the first of each month, plus heat and hydro. Although an \$1,150.00 security deposit and an \$1,150.00 pet damage deposit were paid on February 1, 2018, the landlord gave undisputed sworn testimony that the pet damage deposit was returned during the course of this tenancy when the former co-tenant vacated the premises. The landlords continue to hold the security deposit for this tenancy.

The landlords applied for dispute resolution seeking the unpaid rent of \$2,300.00 for May 2019, the amount identified as owing in their 10 Day Notice. They testified that this amount remains owing.

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.

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

As there is undisputed sworn testimony that the tenant did not pay monthly rent in the amount of \$2,300.00 for May 2019, I allow the landlords' application for a monetary award in this amount.

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 tenant's

security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application and to retain the security deposit for this tenancy:

Item	Amount
Unpaid May 2019 Rent	\$2,300.00
Less Security Deposit	-1,150.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$1,250.00</b>

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

The landlords' application for an Order of Possession based on the 10 Day Notice is withdrawn.

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: July 09, 2019

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Residential Tenancy Branch