



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** FFL OPRM-DR CNR RR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenants requested:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 1:40 P.M. to enable the tenants to participate in this scheduled hearing for 1:30 P.M. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

### **7.3 Consequences of not attending the hearing**

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.

As the tenants did not attend this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on June 19, 2019 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served to the tenants. The landlord testified that MS was served on or around 6:30 P.M., and AS was served on or around 10:30 P.M. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlord's application and evidence.

The landlord indicated in the hearing that the tenants had moved out on June 30, 2019, and no longer requires an Order of Possession. Accordingly, the landlord's application for an Order of Possession is cancelled.

### **Issue(s) to be Decided**

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

### **Background and Evidence**

This fixed-term tenancy began on April 1, 2018, and was to end on April 1, 2020. The tenants moved out on June 30, 2019 after the landlord had served them with a 10 Day Notice for Unpaid Rent on June 3, 2019. Monthly rent was set at \$1,350.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$675.00.

The landlord testified in the hearing that the tenants still owe \$1,350.00 in outstanding rent for June 2019.

### **Analysis**

**Section 26** of the *Act*, in part, states as follows:

#### **Rules about payment and non-payment of rent**

- 26** (1) 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.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,350.00 for June 2019. Therefore, I find that the landlord is entitled to \$1,350.00 in rental arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$675.00 plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

I allow the landlord to recover the filing fee for this application.

### **Conclusion**

As the tenants moved out on June 30, 2019, the landlord withdrew their application for an Order of Possession.

The tenant's entire application is dismissed without leave to reapply.

I issue a \$775.00 Monetary Order in favour of the landlord under the following terms.

<b>Item</b>	<b>Amount</b>
Unpaid Rent for June 2019	\$1,350.00
Filing Fee	100.00
Less Security Deposit	-675.00
<b>Total Monetary Order</b>	<b>\$775.00</b>

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 an Order 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: July 23, 2019

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Residential Tenancy Branch