



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL, CNR

### Introduction

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

- an Order of Possession based on their 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) 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 tenants pursuant to section 72.

The tenants applied for cancellation of the landlords' 10 Day pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable them 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.

As the landlords provided undisputed sworn testimony supported by written evidence that the tenants were handed the 10 Day Notice on June 6, 2019, I find the tenants were duly served with this Notice in accordance with section 88 of the *Act*. Landlord JWG (the landlord) gave undisputed sworn testimony that the tenants were sent individual copies of the landlords' dispute resolution hearing package and written evidence by registered mail on June 21, 2019. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. On this basis and in accordance

with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with this material on June 26, 2019, the fifth day after their registered mailing.

Rule 10.1 of the Rules of Procedure provides as follows:

**10.1 Commencement of the hearing** The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

**Accordingly, in the absence of any attendance at this hearing by the tenants, I order their application dismissed without liberty to reapply.**

At the beginning of the hearing, the landlord testified that the tenants vacated the rental unit on July 1, 2019. As the landlords have vacant possession of the rental unit, they withdrew their application for an Order of Possession. The landlords' application for an Order of Possession is hereby withdrawn.

At the beginning of the hearing, I clarified the landlords' understanding of the spelling of Tenant MM's name, which appears as outlined above. I have made this minor revision to reflect the correct spelling of Tenant MM's name.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover their filing fee for this application from the tenants?

#### Background and Evidence

This tenancy began in June 2014. The landlords entered into written evidence a copy of the most recent fixed term Residential Tenancy Agreement (the Agreement) between the parties signed on August 6, 2019. This tenancy covered the period from June 1, 2018 until May 31, 2019. In the Agreement, monthly rent was set at \$1,995.00, payable in advance by the first of each month. The landlords testified that they continue to hold the tenant's \$900.00 security deposit and \$900.00 pet damage deposit paid in March 2014 shortly before this tenancy began.

The landlords applied for a monetary award of \$2,045.00 in unpaid rent owing for June 2019, and the recovery of their \$100.00 filing fee. In support of this amount of unpaid

rent, the landlords entered into written evidence a copy of their email notifying the tenants that their monthly rent would be increasing to \$2,045.00 as of June 1, 2019. As explained to the landlords at the hearing, Notices of Rent Increase must be provided at least three months in advance and must be provided on the prescribed Residential Tenancy Branch form. As this did not happen, the correct monthly rent for June 2019 remains \$1,995.00, the amount stated on the Agreement.

The landlords testified that the tenants have not paid any rent for the month of June 2019, or since the landlords issued their 10 Day Notice.

### 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 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.”

In this case, there is undisputed evidence that the tenants have failed to pay any rent for the month of June 2019. On this basis, I find that the landlords are entitled to a monetary award of \$1,995.00, the legal rent that is owed for that month.

Although the landlords' application does not seek to retain the tenants' security or pet damage deposits, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' deposits 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 landlords are entitled to recover the \$100.00 filing fee paid for this application from the tenants.

Conclusion

I issue a monetary Order under the following terms, which allows the landlords to recover unpaid rent owed by the tenants and the landlords' filing fee and to retain the tenants' security and pet damage deposits:

<b>Item</b>	<b>Amount</b>
Unpaid June 2019 Rent	\$1,995.00
Less Security and Pet Damage Deposits	-1,800.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$295.00</b>

The landlords are provided with these Orders 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 these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' application is dismissed without leave to reapply.

The landlords' application for an Order of Possession 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: August 02, 2019

---

Residential Tenancy Branch