



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

FFL OPRM-DR CNR FFT OLC

### Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the Residential Tenancy Act.

The landlords applied for:

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenants with the application for dispute resolution, evidence and amendment to their application personally in the presence of a witness. The landlord submitted a signed Proof of Service form as evidence of service. Based on the evidence I find that the tenants were each served with the landlords’ materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord testified that the tenants have vacated the rental unit and an Order of Possession is no longer being sought. The landlords withdrew the portion of their application seeking an Order of Possession.

The landlord made an oral application to amend the amount of their monetary claim by adding an additional \$400.00 for cleaning and repairs performed after the tenants have vacated the tenancy.

Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I find that adding a claim for cleaning costs is a new head of claim and one that could not be reasonably anticipated. As such, I decline to amend the landlords' application to add a new head of claim.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover the filing fee from the tenants?

Are the tenants entitled to any of the relief sought?

#### Background and Evidence

The landlord testified that the rent for this periodic tenancy was \$1,800.00 payable by the first of each month. A security deposit of \$900.00 was collected at the start of the tenancy and is still held by the landlords. The landlord gave evidence that the tenants failed to pay rent in full for May, June, July and August, 2019 and that there is a rental arrear of \$5,400.00 as at the date of the hearing.

#### Analysis

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 reapply.

Therefore, as the tenants did not attend the hearing by 9:40 am, I dismiss the tenants' claim in its entirety without leave to reapply.

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.

I accept the evidence that the signed tenancy agreement provides that the tenants were obligated to pay \$1,800.00 in rent by the first of each month. I accept the evidence of the landlord that the tenants failed to pay rent as required. I accept the landlord's undisputed evidence that there is a rental arrear of \$5,400.00 as at the date of the hearing, August 19, 2019. Accordingly, I issue a monetary award in that amount in the landlord's favour pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

As the landlords were successful in their application they may recover their filing fee from the tenants.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I issue a monetary award in the landlords' favour in the amount of \$4,600.00 allowing the landlords to retain the security deposit for this tenancy and recover the unpaid rent and filing fees from the tenants.

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 19, 2019

---

Residential Tenancy Branch