



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      LL: FFL MNRL OPR  
                             TT: CNR RP

### Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied 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 from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order for repairs pursuant to section 33.

The tenant did not attend this hearing, which lasted approximately 15 minutes. Both named landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord BG (the "landlord") primarily spoke on behalf of both landlords.

The landlord testified that they served the tenant with their application for dispute resolution and evidence by registered mail sent on July 12, 2019. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on July 17, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord made an oral application to amend the monetary amount sought. The landlord indicated that since the application was filed the tenant failed to pay rent for the month of August, 2019 and the rental arrear as of the date of the hearing is \$2,206.00. Pursuant to section 64(3) of the Act and Rule 4.2 of the Residential Tenancy Rules of Procedure, as the additional amount of rent arrear becoming due is reasonably foreseeable I amend the landlords' application to increase the monetary claim from \$1,950.00 to \$2,206.00.

The landlord said that the tenant has vacated the rental unit and an Order of Possession is no longer necessary. The landlords withdrew that portion of their application.

#### Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Are the landlords entitled to a monetary award as claimed?

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

#### Background and Evidence

The monthly rent for this periodic tenancy was \$950.00 payable by the first of each month. A security deposit of \$450.00 was collected at the start of the tenancy and is still held by the landlords.

The landlord gave evidence that the tenant failed to pay rent for the months of June, July and August, 2019. The landlord submits that they calculate the total amount of rental arrear for this tenancy is \$2,206.00.

#### 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 tenant did not attend the hearing by 9:40 am, I dismiss the tenant's 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 tenant is obligated to pay \$950.00 in rent by the first of each month. I accept the evidence of the landlords that the tenant failed to pay rent as required. I accept the landlord's undisputed evidence that there is a rental arrear of \$2,206.00 as at the date of the hearing, August 20, 2019. Accordingly, I issue a monetary award in that amount in the landlords' 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 tenant's 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 \$1,856.00 allowing the landlords to retain the security deposit for this tenancy and recover the unpaid rent and filing fees from the tenant.

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 20, 2019

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Residential Tenancy Branch