



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRUM-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 utilities pursuant to section 55;
- a monetary order for unpaid utilities pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:30 a.m. Landlord LH (the landlord) attended the hearing and was 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 teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the hearing, the landlord withdrew their application for an Order of Possession, as they advised that the tenant vacated the rental unit by July 24, 2019. The landlord also referenced a previous hearing of the tenants' application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice). I heard and dismissed that application by the tenants on August 6, 2019, as the tenants had by that time vacated the rental unit and did not attend the hearing of their application that day (see above). On this basis, the landlords' application for an Order of Possession is hereby withdrawn.

Preliminary Issue - Interim Decision of July 24, 2019

On July 24, 2019, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) issued an Interim Decision regarding the landlord's application using the direct request process for the following:

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

As the Adjudicator was not satisfied that all of the information required for consideration of the landlord's application by way of the ex parte hearing provided pursuant to the Residential Tenancy Branch's (RTB's) direct request procedure had been submitted, the Adjudicator adjourned the landlord's application to a participatory hearing by an arbitrator. In their July 24, 2019 Interim Decision, the Adjudicator provided the following explanation as to why this matter could not be considered using the RTB's direct request process:

*... I find that the address indicated on the Proof of Service of the Notice of Direct Request Proceeding forms does not match the address indicated on the Canada Post envelopes sent to the tenants. I also find that the rental address established in the tenancy agreement does not match either the address listed on the envelopes or the address indicated on the Proof of Service of the Notice of Direct Request Proceeding forms.*

*I find I am not able to confirm service of the Notice of Direct Request Proceeding to the tenants, which is a requirement of the Direct Request Process, and that a participatory hearing is necessary to address this issue...*

I have subsequently been delegated responsibility pursuant to the *Act* to convene the participatory hearing to consider the landlord's application.

#### Preliminary Issue - Service of Documents for this Participatory Hearing

The landlord gave undisputed sworn testimony supported by written evidence that they posted a 10 Day Notice to End Tenancy for Unpaid Utilities (the 10 Day Notice) on the tenants' door on July 11, 2019. The 10 Day Notice identified \$840.99 in utilities as owing as of June 10, 2019. On this basis and pursuant to sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on July 14, 2019, the third day after the posting on their door.

At the hearing, the landlord testified that they sent the tenants a copy of their dispute resolution hearing package and written evidence by registered mail on July 23, 2019. They provided the Canada Post Tracking Number to confirm this registered mailing. The landlord said that at that time, they understood that the tenants were still residing in the rental unit, although a check at the rental unit the following day revealed that the tenants had vacated the rental unit.

As was noted in the Adjudicator's Interim Decision of July 24, 2019, " the landlords must prove they served the tenants with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act* which permits service by sending a copy by registered mail to the address at which the person resides or, by sending a copy by registered mail to a forwarding address provided by the tenant." In this case, since the Adjudicator did not issue their Interim Decision regarding this application until the day **after** the landlord claimed to have sent the tenants notice of this teleconference hearing, it did not seem possible that the landlords could have served the tenants notice of this dispute resolution hearing as claimed by the landlord at this hearing.

In checking the Canada Post Tracking Number identified by the landlord at this hearing, I learned that Canada Post did not receive the landlords' registered mail package until July 31, 2019. By that time, the landlords knew that the tenants no longer resided in the rental unit, as the landlords already had possession of the rental unit by that date. The landlord also said that they believed that the tenants had retained their same mailing address, a post office box, and that mail was still being sent to the tenants at the same mailing address as they had been using before they vacated the rental unit.

On the basis of the above information, I do not find that the tenants were notified of the teleconference hearing scheduled for this date and time in accordance with sections 89 and 90 of the *Act*. However, in locating the record of the landlord's registered mailing of the hearing package and written evidence on Canada Post's Online Tracking System, there is a copy of a signature of Tenant CB as having received this material on August 6, 2019. Even though these materials were not served in accordance with sections 88 and 89 of the *Act*, paragraph 71(2)(c) of the *Act* provides me with the authority to determine that "a document not served in accordance with section 88 or 89 is sufficiently served for purposes of this *Act*." As I find that Tenant CB received the landlord's dispute resolution hearing package and written evidence on August 6, 2019, well in advance of this hearing, I find pursuant to paragraph 71(2)(b) and (c) of the *Act* that these documents were sufficiently served to Tenant CB on August 6, 2019. I make

no such determination with respect to the service of documents to Tenant SV, as there is no similar evidence in place that would enable me to make such a determination with respect to Tenant SV.

#### Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid utilities? Are the landlords entitled to recover the filing fee for this application from Tenant CB?

#### Background and Evidence

The landlord provided sworn testimony supported by written evidence that this month-to-month tenancy began on October 15, 2018. Monthly rent was set at \$1,000.00, payable in advance on the first of each month. In addition, the tenants were also responsible for their own utilities and for propane. The landlord continues to hold the tenants' \$500.00 security deposit for this tenancy paid when this tenancy began.

As noted above, the landlords identified \$840.99 as owing in utilities as of June 10, 2019. They provided written evidence of utility bills that remain owing as of that time.

In the landlord's application for dispute resolution, they sought a monetary award of \$860.00 for unpaid utilities. As the landlord could not explain the difference between these two amounts, the landlord said that they would be satisfied with a monetary award of \$840.99, the amount identified in their 10 Day Notice. The landlord also requested the recovery of their \$100.00 filing fee for this application. Although the landlords have not applied for any monetary award for unpaid rent, the landlord stated that no rent was paid for the month of July 2019, the last month of this tenancy.

#### 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. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant failed to pay utilities for which the

tenant was responsible for paying. 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.

In this case, I find that the landlords have provided undisputed sworn testimony and written evidence that at least \$840.99 in unpaid utilities are owed by the tenants to the landlords arising out of this tenancy. The tenants did not dispute the bills submitted or the landlords' calculations of these outstanding bills. Under these circumstances, I allow the landlords' application for a monetary award of \$840.99, the amount of unpaid utilities identified in the landlords' 10 Day Notice.

Since the landlords have been successful in this application, I allow their application to recover their filing fee.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, and as unpaid utilities become unpaid rent when more than 30 days of non-payment have occurred, I allow the landlords to retain the security deposit for this tenancy plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As was noted above, since I am only satisfied that Tenant CB has been served with the landlords' dispute resolution hearing package and written evidence, the monetary award in the landlords' favour is directed solely at Tenant CB.

### Conclusion

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

Item	Amount
Unpaid Utilities	\$840.99
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$440.99</b>

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

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: September 24, 2019

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Residential Tenancy Branch