



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ISLAND BROTHERS HOUSING  
SERVICES and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 4, 2018, (the "Application"). The Tenant applied for an order granting a rent reduction as well as the return of the filing fee, pursuant to the *Residential Tenancy Act* (the "*Act*").

The Tenant and the Landlord's Agent attended the hearing and the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord in person on August 31, 2019. The Landlord's Agent confirmed receipt. The Landlord's Agent testified that she served the Tenant with her documentary evidence by mail, however, could not recall was date the mailing took place. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Is the Tenant entitled to a rent reduction for loss of use of the rental unit, pursuant to Section 65 of the *Act*?

2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the Act?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 15, 2019. The Tenant pays rent in the amount of \$1,800.00 to the Landlord each month. The Tenant paid a security deposit in the amount of \$900.00, which the Landlord continues to hold.

The parties agreed that prior to the commencement of the tenancy, the Tenant had communications with the Landlord to confirm the details of the rental unit. It was agreed that the Tenant was told that the rental unit was 560 sq. ft. and had air conditioning. The Tenant stated that this was very important to her and led to her decision to rent the rental unit. The Tenant provided an email exchange between her and the Landlord in support.

The Tenant stated that once she moved into the rental unit, she discovered that the rental unit was much smaller than advertised. Furthermore, the Tenant stated that there was no air-conditioning. The Landlord's agent confirmed that the Landlord had made an error in the advertisement and that the Tenant had been misinformed about the size of the rental unit which is 463 sq. ft. The Landlord's Agent stated that the Tenant had been offered a portable air conditioning as well as \$200.00 for the month of July and August 2019, to compensate for the misinformation.

The Tenant is seeking a rent reduction in the amount of \$200.00 retroactively from the start of the tenancy until the end of the tenancy. If successful, the Tenant is also seeking the return of the filing fee.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- *Loss of quiet enjoyment;*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

I accept that the parties agreed that the Tenant was misinformed regarding the details of the rental unit. I accept that the rental unit is roughly 100 sq. ft. less than what the Tenant was informed of. Furthermore, I accept that the rental unit does not have air conditioning, contrary to what the Tenant was told prior to entering the tenancy.

I find that the Landlord further reconfirmed this misinformation throughout the email conversations between the parties in which the Tenant highlights the importance of having a large rental unit with air-conditioning. I accept that this was a mistake made by the Landlord, however, I find that this has left the Tenant with loss in value of the tenancy.

I accept that the Landlord has offered the Tenant a portable air conditioning unit. I find that this is acceptable and that the Tenant is at liberty to accept the offer if she chooses to. It shall be noted that the air conditioning unit is to remain in the rental unit and belongs to the Landlord.

I further find that the Tenant is entitled to a rent reduction in the amount of \$150.00 each month, which will be applied retroactively from the start of her tenancy on July 15, 2019. I find that the Tenant is entitled to this rent reduction until such a time that the tenancy ends.

As the Tenant was successful with her Application, I find that she is entitled to the return of the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the Act, I grant the Tenant a monetary award in the amount of \$625.00 which has been calculated as follows:

| <b>Compensation</b> | <b>Amount</b>   |
|---------------------|-----------------|
| Half of July 2019:  | \$75.00         |
| August 2019:        | \$150.00        |
| September 2019:     | \$150.00        |
| October 2019:       | \$150.00        |
| Filing Fee:         | \$100.00        |
| <b>TOTAL:</b>       | <b>\$625.00</b> |

I order that the Tenant deduct the amount of \$625.00 from one (1) future rent payment. Additionally, the Tenant is entitled to an ongoing monthly rent reduction in the amount of \$150.00 until the end of the tenancy.

### Conclusion

The Tenant is awarded \$625.00, in relation to the Landlord misinforming the Tenant on the size of the rental unit and service provided. I authorize the Tenant to deduct

\$625.00 from one (1) future rent payment as well as an ongoing monthly rent payment reduction in the amount of \$150.00 until the end of the tenancy.

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: November 4, 2019

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Residential Tenancy Branch