



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, OPL, CNC, CNL, RR, MNDC-S, FF

### Introduction

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

- an order of possession for cause and for landlord's use pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed their understanding of the issues and were prepared to proceed with the hearing. Both parties made submissions and presented evidence. Neither party raised any service issues. I accept the testimony of both parties and find that both parties have been sufficiently served as per section 90 of the *Act*.

### Preliminary Issue(s)

At the outset, the applications filed by both parties were clarified. Both tenants confirmed at the outset, that they were in the process of vacating the rental unit as of the date this hearing. Both tenants stated that they would be out by the end of September 9, 2019. As such, discussions with all parties resulted in the landlord being granted an order of possession for September 10, 2019. As the tenancy is at an end the remaining issues for both parties were identified regarding monetary claims. Both parties also confirmed that the landlord's request to call forward an additional file made by the landlord regarding an order of possession and a monetary request for unpaid rent was accepted by the tenants. The landlord cancelled his monetary claim for \$2,500.00 but would still proceed for his monetary request for unpaid rent and the filing fee totalling, \$1,100.00. The tenants have also cancelled part of their monetary claim as insufficient details were provided. All parties confirmed their understanding of the tenants' monetary claim to proceed for \$1,310.00. The hearing shall proceed on this basis.

After 56 minutes of discussions, the monetary claims for both parties was adjourned to due a lack of time. I note that extensive time was spent clarifying the details of both monetary claims filed.

The hearing was adjourned. Both parties were cautioned that no new submissions of evidence were to be made, nor would they be accepted. Both parties confirmed their mailing addresses for delivery of the interim decision and the notice of an adjournment. The tenants clarified their mailing address and as such the Residential Tenancy Branch Files shall be amended to reflect the tenants' General Delivery Address.

On October 28, 2019 at 9:30 am, the hearing resumed with both parties.

#### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?  
Are the tenants entitled to a monetary order for money owed or compensation?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This is a single tenancy agreement which began on December 1, 2018 on a fixed term tenancy ending on May 31, 2018 as per the submitted copy of the signed tenancy agreement dated November 27, 2018 for both tenants. The monthly rent is \$2,000.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,000.00 was paid on December 1, 2018.

The landlord seeks a monetary claim of \$1,100.00 for unpaid rent and recovery of the filing fee. The landlord claims that the tenant failed to pay rent for August 2019 of \$1,000.00. The tenants disputed this claim stating that rent was paid in an etransfer, but was unable to provide any details of the payment despite saying that it was included in the body of their documentary evidence package. A review of the landlord's application shows that no documentary evidence was submitted in response by the tenants in response to the landlord's claims. A review of the tenant's application shows that the tenant submitted documentary evidence consisting of a copy of a 1 month notice, a 2 month notice, a partial copy of a tenancy agreement and a bulk evidence submission of 85 pages. A review of the bulk evidence revealed hand written submission, text messages, copies of multiple 10 Day Notice(s), statement printouts of account transactions for November 2017, December 2018 and May 2019. There were no apparent details for any August 2019 rent payments.

The tenant seeks a monetary claim \$1,310.00 which consists of:

\$200.00	Repair deck, staining
\$75.00	Fix sink,
\$100.00	install washing machine
\$35.00	gas/oil for landlord's contractor
\$300.00	labour, gravel
\$100.00	fuel costs, truck
\$500.00	loss of work

The tenants claim that the landlord agreed an exchange of services/upgrades and repairs in exchange for rent. The tenants state that a disagreement occurred on the monetary value for these agreements between the two parties in verbal agreements with the landlord. The tenants also seek return of the \$1,000.00 security deposit.

The tenants stated that verbal agreements were made with the landlord for:

- to repair and stain the deck in exchange for \$200.00 off of the monthly rent
- to fix the sink in exchange for \$75.00 off of the monthly rent

- to install a washing machine and remove the old one for \$100.00 off of the monthly rent
- reimbursement of gas/oil provided to the landlord's contractor
- labour
- tenants labour to assist for gravel
- fuel costs for the tenant's truck
- loss of wages, re: the landlord failing to attend the rental unit

The tenants argue that the landlord made verbal agreements promising to credit the tenants with the above noted amounts.

The landlord disputes all of these monetary claims made by the tenants. The landlord stated that at no time were any agreements made with the tenants regarding these "services". The landlord stated that in regard to the installation of a washing machine, the tenant in fact denied access for the landlord's contractor to install the washing machine.

### 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.

I find that the landlord has established a claim for unpaid rent of \$1,000.00 for August 2019 rent. The tenants disputed this claim arguing that rent was paid via a e-transfer and has stated that the evidence was submitted in the body of their documentary evidence. The tenants were unable to provide direction on what evidence was submitted regarding the e-transfer. An extensive review of all of the tenants' evidence revealed no details of a rent payment for August 2019 of \$1,000.00.

On the tenants' monetary claim of \$1,310.00, I find that the tenants have failed to establish a claim. The tenants claim was for services/materials in exchange for credit off of the monthly rent. The tenants have stated that multiple verbal agreements were made between the two parties, but the landlord has argued that no such agreements

had been made. I find in the absence of any supporting evidence for the tenants' claims that the tenants have failed to provide sufficient evidence of this agreement. On this basis, the tenants' monetary claim is dismissed.

The landlord has established a total monetary claim of \$1,000.00. I also order as such, that the landlord is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1,000.00 security deposit in partial satisfaction of this claim.

### Conclusion

The landlord is granted a monetary order for \$100.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order 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: November 8, 2019

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Residential Tenancy Branch