



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

FFL MNDL-S MNRL-S OPR CNR LRE

### Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary order pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; and
- An order suspending or setting conditions on the landlord’s right to enter the rental unit pursuant to section 70.

The tenant 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 with their family member and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

A substituted service order was issued on November 4, 2019 allowing the landlord to serve the tenant by email. The landlord testified that they served the tenant by email on that date with their application, amendment and evidentiary materials. Based on the landlord’s testimony I find that the tenant was sufficiently served with the materials in accordance with section 71 of the *Act*.

The tenant had included in their documentary evidence a note requesting the hearing be adjourned and rescheduled for another time. The tenant submits that they are attending school at the time of the hearing and will be unable to participate in the hearing.

Residential Tenancy Rule of Procedure 7.9 sets out some of the criteria to be considered by an arbitrator when determining if an adjournment should be granted. I find that the tenant has not met the standards for granting of an adjournment. While the tenant may have classes scheduled at the hearing time they could appoint an agent to attend the hearing in their stead. A Residential Tenancy Branch hearing is a legal proceeding and not something to be scheduled around a party's convenience. I find the tenant's failure to attend arises out of their own academic schedule and choice to attend classes rather than make any alternate arrangements. I find that their absence is the result of the tenant's own actions and not borne out of circumstances beyond their control. Furthermore, I find that there is little evidence that the adjournment would be conducive towards the parties resolving their dispute. I find that any potential prejudice to the tenant in proceeding with the hearing is outweighed by the prejudice to the landlord. For these reasons I dismissed the tenant's application for an adjournment and proceeded with the hearing.

At the outset of the hearing the landlord said that the tenant has vacated the rental unit and they withdrew the portion of their application seeking an Order of Possession.

The landlord made an application requesting to amend the monetary amount of their claim. The landlords indicated that since the application was filed they have received quotes for repairs to the damages to the suite and that they have incurred additional losses for rental income as they have not been able to find a new occupant.

Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as receiving an accurate quote and incurring additional rental income losses is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$2,160.80 to \$9,160.80.

#### Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

This periodic tenancy began in 2017. The monthly rent was \$2,000.00 payable on the first of each month. A security deposit of \$1,000.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a furnished basement suite in a detached home. No condition inspection report was prepared at any time for this tenancy.

The landlord had issued a 10 Day Notice to End Tenancy for Unpaid Rent dated October 4, 2019 with an effective date of October 17, 2019. The landlord said that the tenant vacated the rental unit on or about October 28, 2019.

The landlord seeks a monetary award in the amount of \$9,160.80 for the following items:

<b>Item</b>	<b>Amount</b>
Carpet Cleaning	\$168.00
Changing Locks	\$288.75
Veterinary Bills	\$288.76
Legal Advise	\$504.00
Replacement Mattresses	\$200.00
Replacement Damaged Items	\$711.29
Loss of Rental Income November 2019	\$2,000.00
Replacement of Carpets	\$5,000.00
<b>TOTAL</b>	<b>\$9,160.80</b>

The landlord submits photographs of the suite and says that it was left in a state of disarray requiring cleaning and replacement of furnishings. The landlord testified that the suite was in a new condition at the start of the tenancy. They said that they intend to replace the carpet of the suite and have received a professional quote for the cost.

The landlord submits that they believe their dog was poisoned by the tenant who left garbage accessible to the dog. The landlord submitted photographs of plastic bags of garbage which they believe were discarded by the tenant and consumed by their dog.

The landlord testified that they have been unable to find a new occupant for the rental suite and seek the equivalent of one month's rent. The landlord gave no evidence of what measures they have taken to find a new occupant.

### Analysis

The tenant did not attend the hearing which was scheduled by conference call at 1:30pm. Rule 7.3 of the Rules of Procedure provides that:

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 re-apply.

Consequently I dismiss the tenant's application 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.

In the absence of a proper condition inspection report prepared at the start of the tenancy I find that there is insufficient evidence to attribute the damage in the suite to the tenancy. While the landlord has provided photographs of the suite and some of the furnishings I find that there is insufficient evidence to attribute the need for repairs and replacement to the tenant. Furthermore, there is little indication that the photographs submitted by the landlord accurately represent the suite at the end of the tenancy. The *Act* sets out the requirement for a landlord to complete a condition inspection report for the very purpose of avoiding such ambiguities. I find that the photographs submitted by the landlord and their testimony as to the condition of the suite to be an inadequate substitute that does not replace the landlord's failure to prepare a report in accordance with the *Act*. I find that as a whole the landlord has failed to meet their evidentiary burden to establish that the condition of the rental suite arises due to the tenant. For this reason I dismiss the portion of the landlord's application seeking cleaning costs, repair costs and replacement costs for items in the suite.

While the landlord blames the tenant for the poor health of their dog, I find that there is insufficient evidence that the tenant is responsible for the veterinary costs incurred. The landlord's evidence consists of suppositions, conjecture and accusations. I find that the landlord's accusation that the tenant discarded their organic waste out of their window into their yard is not a reasonable conclusion. The landlord bears the burden of proof

on a balance of probabilities. I find that the landlord's submission that the tenant discarded organic waste directly outside their window or over their fence to be an unlikely conclusion. I find that the few photographs of garbage bags that have been scavenged and gnawed at by the landlord's dog to not show that waste has been improperly disposed of by the tenant. As I find that the landlord has not established this portion of their claim on a balance of probabilities it is dismissed.

I find that legal costs are not a loss that is attributable to the tenant, but simply a cost of informing oneself of their legal obligations and therefore not a head of damage that can be claimed. For this reason I dismiss this portion of the landlord's application.

While the landlord claims that they have been unable to find a new occupant for the rental suite, I find that they have provided little evidence of their efforts to mitigate any rental income loss. The landlord testified that the tenant vacated the suite on October 28, 2019. The landlord provided no information as to what they have done to advertise the suite, whether they have listed it as available or that they have taken any reasonable steps in order to attempt to mitigate their losses. Based on the evidence submitted I find that the landlord has failed to establish that they have incurred a loss due to the tenant and not borne out of their failure to take reasonable steps. As such, I dismiss this portion of the landlord's application.

As the landlord was not successful in their application they are not entitled to the filing fee for this tenancy.

Conclusion

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

The portion of the landlord's application seeking an Order of Possession is withdrawn.

The balance of the landlord's application is dismissed without leave to reapply.

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 15, 2019

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Residential Tenancy Branch