



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFL, OPC, MNRL-S**

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession 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 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 appeared, assisted by a family member, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the named respondents with the notice of application and evidence by registered mail sent on September 9, 2020. The landlord provided two valid Canada Post tracking receipts as evidence of service. Based on the evidence I find each tenant deemed served with the landlord's materials on September 14, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified that the tenants have vacated the rental unit and withdrew the portion of their application seeking an Order of Possession.

### **Issue(s) to be Decided**

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 January 2019. The monthly rent is \$1,200.00 payable on the first of each month. A security deposit of \$500.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay monthly rent in the amount of \$1,200.00 on September 1, 2020 and there is a rental arrear of that amount as at the date of the hearing. The landlord also testified that during the tenancy there was conflict with the tenants who shut off the power to the building and abused the utilities.

### 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 accept the evidence of the landlord that there was a valid tenancy agreement between the parties wherein the tenants were obligated to pay rent in the amount of \$1,200.00 each month. I accept that they have failed to pay rent for the month of September, 2020 and there is a rental arrear of \$1,200.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour in that amount against the tenants.

While the landlord made some reference to damages from conflicts with the tenants and the state of the rental unit after the tenants vacated, I find that these items were not included in the original application and adding a new head of claim without notice to the respondents would be contrary to the principles of procedural fairness. Therefore, I decline to consider the other issues raised by the landlord at the hearing.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' full security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$800.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: October 8, 2020

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Residential Tenancy Branch