



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPRM-DR, OPR-DR-PP, FFL

### Introduction

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

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

The two tenants, "tenant CF" and "tenant CM," did not attend this hearing, which lasted approximately 19 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenants. An "interim decision," dated October 13, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenants. The landlord testified that she served each tenant with the above documents on October 14, 2020, both by way of registered mail to the rental unit where the tenants were still residing. The landlord provided two Canada Post receipts and confirmed the tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the interim decision and notice of reconvened hearing documents on October 19, 2020, five days after their registered mailings.

The landlord stated that she served each tenant with the landlord's original application for dispute resolution by direct request on September 26, 2020, both by way of registered mail to the rental unit where the tenants were still residing. The landlord provided two Canada Post receipts and confirmed the tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's original application on October 1, 2020, five days after their registered mailings.

At the outset of the hearing, the landlord confirmed that the tenants had vacated the rental unit and she no longer required an order of possession. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

#### Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include October 2020 rent. I find that the tenants are aware that rent is due as per their tenancy agreement. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that they did not attend this hearing.

#### Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee paid for this application?

#### Background and Evidence

The landlord testified regarding the following facts. The tenancy with tenant CF began on November 19, 2019 and ended on November 1, 2020. Tenant CF was living with another roommate A, who moved out in April 2020. Tenant CF was living alone in the rental unit from May to June 2020. The tenancy with tenant CM began on July 1, 2020 and ended on October 21, 2020. Monthly rent in the amount of \$1,200.00 was payable on the first day of each month, with each tenant paying \$600.00 each to the landlord. Tenant CF was required to pay the full \$1,200.00 per month while he was living alone in May and June 2020. A security deposit of \$600.00 total was paid, with each tenant paying \$300.00 each to the landlord. The landlord returned tenant CM's security

deposit of \$300.00 to him, after he provided a forwarding address to the landlord. The landlord retained tenant CF's security deposit of \$300.00, as he did not provide a forwarding address to the landlord. A written tenancy agreement was signed by tenant CF and roommate A in November 2019, and tenant CM was added to the tenancy agreement when roommate A was removed, in an amendment, dated July 27, 2020. Copies of the written tenancy agreement and amendment were provided for this hearing.

The landlord seeks a monetary order of \$1,500.00 for unpaid rent from tenant CF and the \$100.00 filing fee paid for this application. The landlord claimed that she was not pursuing a monetary order against tenant CM, since he paid full rent up to October 2020 and there is no outstanding money owed by him. The landlord said that tenant CF owes rent of \$300.00 for May 2020, \$600.00 for June 2020, and \$600.00 for October 2020, totalling \$1,500.00. The landlord seeks to offset the \$300.00 security deposit from tenant CF, against the \$1,500.00 rent owed by him.

### Analysis

As per section 26 of the *Act*, the tenants are required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that tenant CF failed to pay rent of \$300.00 for May 2020 and \$600.00 for each of June and October 2020. Therefore, I find that the landlord is entitled to \$1,500.00 in rental arrears from tenant CF only.

The landlord continues to hold tenant CF's security deposit of \$300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain tenant's CF's entire security deposit of \$300.00, in partial satisfaction of the monetary award against him. No interest is payable on this deposit over the period of this tenancy.

As the landlord was partially successful in this application, I find that she is entitled to recover the \$100.00 application filing fee from tenant CF only, as no monetary orders were sought or made against tenant CM.

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I order the landlord to retain tenant CF's entire security deposit of \$300.00.

I issue a monetary order in the landlord's favour in the amount of \$1,300.00 against the tenant CF only. Tenant CF must be served with this Order as soon as possible. Should tenant CF 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: December 15, 2020

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Residential Tenancy Branch