



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **LL: FFL, OPU-DR, MNRL, MNDL, MNDCL, OPR**  
**TT: CNR OLC**

### **Introduction**

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

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent, damages and loss 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 that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

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 co-landlord and each 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 the tenant with the notice of application and evidence by registered mail on January 15, 2021 and their subsequent Amendment to their Application and additional evidence by registered mail sent on March 11, 2021. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord’s

materials on January 20, 2021 and March 16, 2021 respectively, five days after the mailing of each package, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord said the tenancy has ended and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Is the tenant entitled to any relief?

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

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in January 2020. The monthly rent was \$2,500.00 payable on the first of each month. No deposit was paid by the tenant.

The tenant failed to pay rent for the month of January 2021 and subsequently abandoned the rental unit with no notice to the landlord sometime in that month. No rent was paid for February 2021 and the tenant did not participate in a move-out inspection of the rental unit.

The landlord inspected the rental unit in the absence of the tenant and found it to be in a state of disrepair requiring considerable cleaning, repairs and maintenance. Among the issues noted by the landlord include items left in the rental unit, appliances dented, damaged and malfunctioning, window blinds that were damaged, walls, doors and fixtures that are damaged and in need of replacement or major repairs. The landlord submitted numerous photographs of the rental unit in support of their position.

The landlord performed much of the cleaning and repair work themselves as well as retaining third party companies to perform some repairs. The landlord submits that the total cost of the work required for the rental unit was \$16,653.66. The landlord submitted invoices and receipts in support of their monetary claim. The landlord noted that there was a typographic error in their application and this is the correct amount of their losses.

The landlord says that the repair and cleaning of the rental unit took several weeks and they were unable to find a new occupant for the suite for February and March 2021. The landlord submits that as a result they incurred rental income losses of \$5,000.00.

### Analysis

Rule 7.3 of the Rules of Procedure provides as follows:

**7.3 Consequences of not attending the hearing** – 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 reapply.

As the tenant did not attend this hearing to pursue their application, I dismiss the tenant's claim 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.

I accept the undisputed evidence of the landlord that the tenant failed to pay rent as required under the tenancy agreement and there is a rental arrear of \$2,500.00 for this tenancy. I issue a monetary award in the landlord's favour for that amount accordingly.

I find that the landlord has provided through their photographs, invoices and testimony a preponderance of evidence to demonstrate that the rental unit required considerable expenditure to restore to its pre-tenancy condition. I am satisfied that the work was required as a direct result of the tenant's use of the rental property and that the cost incurred by the landlord are reasonable to restore the unit. I find that the nature of the costs and work done shown in the invoices and through the landlord's testimony to be proportional to the state of the rental unit and reasonable to restore the unit. Accordingly, I issue a monetary award in the amount of \$16,653.66 as claimed.

I accept the landlord's evidence that despite their best efforts they were unable to find a new occupant for the rental unit for February and March 2021 and incurred rental income losses as a result. Accordingly, I find the landlord is entitled to a monetary award in the amount of \$5,000.00 for these losses.

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

### 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.

I issue a monetary order in the landlord's favour in the amount of \$24,253.66 representing unpaid rent, loss of rental income, damages and loss and the recovery of the filing fee. The tenant must be served with this Order as soon as possible. Should the tenant 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: April 1, 2021

---

Residential Tenancy Branch