



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      TT: **FFT, CNR, OLC, MNDCT, AAT, DRI**  
                             LL: **OPR-DR, OPRM-DR, FFL, MNDCL**

### 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 and utilities, damages and loss pursuant to section 67;
- 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;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- A monetary award for damages and loss pursuant to section 67;
- An order to allow the tenant or their guests to access the rental unit pursuant to section 70;
- Dispute of a rent increase pursuant to section 43; and
- Authorization to recover their filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

During the hearing the parties testified that the tenant is vacating the rental unit at the end of the week and withdrew the portions of their respective applications pertaining to cancellation of the Notice to End and an ongoing tenancy.

### Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee from the other?

### 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in November, 2020. The monthly rent was \$1,000.00 payable on the first of each month. A security deposit of \$500.00 was paid at the start of the tenancy and is still held by the landlord.

The signed tenancy agreement provides that utilities are included in the rent. An addendum to the tenancy agreement provides that “if the tenant has a roommate move in it is required to email the landlord with the name of the tenant and an additional \$100.00 month rental will be charged”. An additional clause states “utilities included, however if there is an excessive use of hydro (doing a friends laundry) you will be charged an additional fee of \$35 per month”.

The landlord submits that the tenant’s boyfriend stays with them in the rental suite a majority of the time and therefore the monthly rent should be \$1,100.00. The landlord submitted into evidence pages from a calendar in which they noted the dates when the tenant had overnight guests. The landlord submits that the monthly rent was increased to \$1,100.00 as of February 1, 2021 and the tenant has failed to pay the full rent since that time.

The landlord also submits that while the tenancy agreement provides that utilities are included in the rent the tenant abuses the utilities. The landlord submits that utility bills are significantly higher than in previous years and therefore the tenant is required to pay the utility surcharges.

The landlord seeks a monetary award of \$750.00 for unpaid rent and utility surcharges.

The tenant disputes that there is an excessive use of the utilities or that they have added a roommate to the tenancy. The tenant acknowledges that they have guests who have stayed overnight but submits that they have not informed the landlord that they have moved in and need to be added to the tenancy agreement.

The tenant seeks a monetary award for their loss of income and costs of filing their application, serving it on the landlord and attending the present hearing.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a breach of the *Act*, regulations or tenancy agreement, 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 insufficient evidence to support the tenant's monetary claim. I find that any costs incurred for filing, serving or attending a hearing to be the expected costs of pursuing an application. I also note that the tenant has provided little evidence to support any costs or losses. I consequently dismiss the tenant's application.

Section 6(3) of the *Act* provides that terms of a tenancy agreement are not enforceable if they are:

- (a) Inconsistent with the *Act* or the regulations;
- (b) Unconscionable, or
- (c) Not expressed in a manner that clearly communicates the rights and obligations.

I find the clauses in the addendum to the tenancy agreement on which the landlord relies for their monetary award to be unenforceable. I find both of the clauses to be vague and open to interpretation. It appears that the determination of when a tenant has allowed a roommate to move into the rental suite or what constitutes an excessive use of utilities is left to the sole discretion of the landlord.

In the present circumstance the landlord unilaterally has determined that the tenant's guests are now roommates and that the monthly rent has increased and that the use of

utilities is deemed to be excessive. I find that a clause that allows the landlord to make such determinations to be both vague, subjective and singularly unconscionable. Therefore, I find these clauses to be unenforceable.

Accordingly, I find that the landlord has not met their evidentiary burden to demonstrate any violation of the Act, regulations or tenancy agreement on the part of the tenant and their application is dismissed.

As neither party was successful in their application I decline to issue a monetary award to allow for the recovery of the filing fees.

### Conclusion

The applications of both the tenant and landlord are dismissed in their entirety 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: May 11, 2021

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Residential Tenancy Branch