



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNRL, FFL, MNDCL

### Introduction

On February 26, 2021 the landlord submitted an Application for Dispute Resolution (the “Application”). This was for:

- a. an Order of Possession in line with the One-Month Notice to End Tenancy for Cause
- b. an Order of Possession in line with the 10-Day Notice to End Tenancy for Unpaid Rent
- c. compensation for unpaid rent
- d. compensation of the Application filing fee.

On May 14, 2021 the landlord filed an Amendment to this Application. They removed items a. through c. listed above. They obtained an Order of Possession previously in another dispute resolution hearing. By this amendment they made an additional claim for monetary loss or other money owed.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 4, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The tenant did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the Notice of Dispute Resolution for this hearing. This

means the landlord must provide proof that they served the document by a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord set out how they served this notice to the tenant via registered mail within required timelines. They presented a print of Canada Post registered mail tracking bearing the tenant's signature; and statement from a witness who observed service. The landlord stated that the package they sent included all the evidence they intended to rely on for this hearing.

The landlord provided proof that they served the Amended Application and service of supporting documents for their claim to the tenant via email on May 16, 2021. By this evidence, I am certain of the landlord's service of this updated claim, with email being an acceptable method as per s. 89(1)(f) of the *Act*.

#### Issue(s) to be Decided

Is the landlord entitled to compensation for other monetary loss pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord presented that they had to engage bailiff services to enforce the Order of Possession granted in in a separate hearing on April 20, 2021. They served the Order on April 21, 2021 and the tenant did not vacate, nor did they indicate when they would leave.

The landlord filed for a Writ of Possession on May 5, 2021, with an affidavit supporting their Application. These documents appear in the landlord's evidence. This cost to the landlord was \$120 for the filing fee.

On May 10, 2021 the landlord commissioned a bailiff to execute the Writ of Possession. This cost was \$1,974.88, as shown on the invoice they provided in their evidence.

The landlord here claims the total amount for these costs, \$2,094.88 in total.

The tenant did not attend the hearing and did not submit documentation to show evidence contrary to what the landlord presented here.

### Analysis

Concerning a monetary claim, the party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in s. 7 and s. 67 of the *Act*.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any to mitigate the damage or loss.

The landlord presented receipts for each of the costs incurred with vacating the tenant from the rental unit on May 10, 2021. I find they have established the value of the monetary loss. Moreover, I find the loss results from the tenant's violation of the *Act* where they did not vacate the unit upon receiving the Order of Possession served by the landlord on April 21, 2021.

A Writ of Possession is the only legal avenue by which a landlord may enforce an Order of Possession. By this method, there is no means for the landlord to mitigate the loss. By doing so in a timely method, I find the landlord minimized their other losses such as interruption to rent amounts for the rental unit going forward, or any damage that may have ensued in the interim.

I find the landlord established their claim for \$2,094.88. I so award the landlord a monetary order for this amount.

Because the landlord was successful in their claim, I find they are entitled to the Application filing fee amount of \$100.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order for the recovery of the amounts claimed and the filing fee for this Application. The amount is \$2,194.88. The landlord is provided with this Order in the above terms and they must serve the tenant with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court and enforce it as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: June 7, 2021

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Residential Tenancy Branch