



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **LL: OPR-DR, OPRM-DR**  
                                 **TT: CNR-MT, RR, FFT**

### **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; and
- A monetary award for unpaid rent pursuant to section 67.

The tenant applied for:

- More time to file their application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 66;
- Cancellation of the 10 Day Notice pursuant to section 46;
- An order to reduce rent for services or facilities agreed upon but not provided pursuant to section 65; and
- Authorization to recover the 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. Both parties were assisted by agents and interpreters.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

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*.

At the outset of the hearing the parties testified that this tenancy has ended and withdrew the portions of their respective applications pertaining to an ongoing tenancy.

The landlord requested to amend their application submitting that the amount of the rental arrear has changed since filing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as rental arrear changing over time as new rent becomes payable is reasonably foreseeable, I amend the landlord's Application to increase the landlords' monetary claim from \$3,000.00 to \$9,000.00.

### Issues

Is the landlord entitled to a monetary award as claimed?

Is the tenant entitled to a retroactive rent reduction as claimed?

Is the tenant entitled to recover their filing fee from the landlord?

### 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. The monthly rent for this tenancy was \$3,000.00 payable on the 8<sup>th</sup> of each month. A security deposit of \$1,500.00 was collected at the start of the tenancy and is still held by the landlord. The tenant did not pay any rent from February 2021 until the tenancy ended in May 2021.

The landlord calculates that there is a rental arrear of \$9,000.00 and seeks a monetary award for recovery of the unpaid rent in that amount.

The tenant submits that they attempted to pay the landlord the rent for February 2021 but the landlord refused to accept payment. The tenant also testified that there was an agreement in place between the parties whereby the tenant was authorized to make renovations to the rental unit and the landlord would reimburse them for the costs of the work done. The tenant submitted into evidence a receipt for \$8,400.00 for installing walls and door and painting and finishing the suite. The tenant also submitted into

evidence portions of text message conversations with the landlord requesting reduction in rent during the Covid pandemic.

### 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. This section, read in conjunction with section 65 of the *Act* allows me the authority to issue a retroactive reduction in the rent for a tenancy.

I accept the undisputed evidence of the parties that the tenant failed to pay rent as required in the tenancy agreement and that there is a rental arrear for this tenancy. I accept the landlord's undisputed evidence that the amount of rent unpaid is \$9,000.00. I find little support for the tenant's position that they were authorized to withhold any portion of the rent. The copies of the correspondence submitted into evidence by the tenant shows the landlord clearly stating that no reduction of rent is authorized.

I find that the tenant was obligated to pay rent in the amount of \$3,000.00 on the 8<sup>th</sup> of each month as set out in the signed tenancy agreement. I accept that the tenant has breached the agreement by failing to pay rent on the specified date. I accept the evidence that the total amount of the rental arrear for this tenancy is \$9,000.00 and issue a monetary award in the landlord's favour for that amount accordingly.

I find little evidence in support of the tenant's submission that there was an agreement between the parties whereby the tenant could arrange for renovations of the rental unit and be reimbursed for their costs. The landlord disputed that any such agreement was in place and I find that a single receipt to be insufficient evidence of an agreement with the landlord. I further note that the receipt submitted is dated August 20, 2019 and there is no other documentary evidence where an agreement is discussed or referenced. It would be reasonable to expect that if there was such an agreement then some mention would have been made in the two years after the tenant incurred the costs. There is no documentary evidence showing that the tenant requested repayment, withheld monthly rent payments to reflect their expenses or that there was

any agreement with the landlord. I find the tenant has failed to meet their evidentiary onus and consequently dismiss this portion of the tenant's application.

As the tenant was unsuccessful in their application I decline to award them the recovery of their filing fees.

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

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$7,500.00. 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: June 29, 2021

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Residential Tenancy Branch