



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

**OPU-DR, MNU-DR, FFL**

### Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

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 and was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

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

The landlord testified that they served the tenant with the interim decision and notice of reconvened hearing by registered mail sent on June 24, 2021. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on June 29, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord requested to amend their application. The landlord testified that the tenancy has ended on July 31, 2021 and an Order of Possession is no longer sought. They withdrew the portion of their application seeking an Order of Possession.

The landlord requested to amend the monetary amount of their claim noting that since the application was filed additional rent and utilities has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent and utilities coming due over time is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$6,914.28.

The landlord said that they had filed a separate application for the same relief under the file number on the first page of this decision. The landlord withdrew that application in its entirety. Pursuant to Residential Tenancy Rule of Procedure 5.0.1 the second application under the file number on the first page of this decision is withdrawn.

### Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

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

### Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began on June 1, 2015. The monthly rent was \$1,190.00 payable on the first of each month. The tenant is also responsible for paying all of the utilities for the rental property. The landlord holds a security deposit of \$550.00.

The landlord submits that there is an arrear of \$6,914.28 as at September 23, 2021, the date of the hearing arising from unpaid rent and utilities. The landlord submitted into documentary evidence copies of the utility bills for the property, written demand letters issued to the tenant for payment of the utilities and their calculation of the rental arrear. The landlord testified that the tenant has failed to pay any rent or utilities for the months of March, April, May, June and July 2021.

### 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.

I accept the undisputed evidence of the landlord that the tenancy agreement between the parties provides that the tenant is obligated to pay rent in the amount of \$1,190.00 on the first of each month and the utilities for the rental property. I accept the evidence that the tenant failed to pay rent as required for the five months prior to their vacating the rental unit as well as the utilities despite being issued written demand for payment. I accept the undisputed evidence of the landlord that the total arrear for this tenancy is \$6,914.28 and issue a monetary award in that amount in the landlord's favour.

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

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

I issue a monetary order in the landlord's favour in the amount of \$6,464.28, allowing the landlord to recover the arrear for this tenancy and the filing fee and to retain the security deposit. 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.

The portion of this application seeking an Order of Possession is withdrawn. The other application of the landlord under the separate file number is withdrawn in its entirety.

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: September 23, 2021

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Residential Tenancy Branch