



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

**LL: MNR-DR, OPR-DR, FFL**

**TT: CNR, RR, RP, LRE, OLC, FFT**

### Introduction

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

The landlords applied 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 for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- an order to allow the tenant to reduce pursuant to section 65;
- an order to the landlords to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants 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 BG

attended on behalf of both named applicants and 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 tenants with the notice of application and evidence by registered mail sent on September 22, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on September 27, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord testified that the tenancy ended with the tenants vacating the rental unit sometime in October 2021. As this tenancy has ended the landlords withdrew the portion of their application seeking an Order of Possession.

The landlords made vague reference to additional monetary claims for damage to the rental unit and insurance deductibles paid. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as adding new heads of claim without notice to the respondents would be unfairly prejudicial and contrary to the principles of procedural fairness I decline to amend the landlords' application to include any claims other than indicated on the original notice.

#### Issue(s) to be Decided

Are the landlords entitled to a monetary award as sought?

Are the tenants entitled to any of the relief sought?

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.

This periodic tenancy began on January 29, 2021. The monthly rent for this tenancy is \$2,700.00 payable on the first of each month. A security deposit of \$1,350.00 was paid at the start of the tenancy and is held by the landlords.

A copy of the tenancy agreement was submitted into evidence. The agreement is not signed by the tenants. Despite the agreement indicating that this is a periodic tenancy it also indicates that the tenants must vacate the rental unit at the end of the term "For farm labor to take residence".

The landlords submit that there was a rental arrear as at August 7, 2021 giving rise to the issuance of a 10 Day Notice. The landlords issued a 10 Day Notice dated August 7, 2021 indicating a rental arrear of \$4,150.00.

The landlords submitted into documentary evidence a Direct Request worksheet, contradicting the information on the 10 Day Notice and indicating that there is a total rent arrear of \$4,870.00 for this tenancy payable on August 1, 2021. The worksheet also indicates that the rent payable on June 1, 2021 is \$2,970.00 not the \$2,700.00 indicated on the tenancy agreement.

In their application the landlords indicate that they are seeking a monetary award of \$4,000.00.

The landlord was given multiple opportunities to clarify the actual amount of the monetary award they are seeking and how they calculated the figure. The landlord failed to provide a cogent response, making vague reference to damage to the rental unit, unpaid rent for the months after October 2021 when the tenants vacated the rental unit and insurance claims.

The landlord spent the balance of the hearing time complaining about the results of their earlier application under the file number on the first page of this decision and how they felt section 77 of the Act which provides that dispute resolution decisions must be in writing is unfair.

### 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 tenants did not attend this hearing to pursue their application, I dismiss the tenants' 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.

The landlords seek a monetary award of \$4,000.00 on their application, \$4,870.00 according to their Direct Request worksheet and \$4,150.00 based on their 10 Day Notice. In addition, the landlord provided testimony alluding to additional unpaid rent.

Based on their contradictory evidence and failure to provide a cogent, consistent response to the simple question of how much is the unpaid rent for this tenancy, I am not satisfied that the landlord has established their claim on a balance of probabilities.

Calculating and demonstrating that there is a rental arrear for a tenancy ought to be a straightforward proposition for a landlord. Rather than provide documentary evidence by way of a rental ledger or bank statements or provide testimony explaining what amounts were owing or paid for each month of the tenancy, the landlord made vague reference to amounts without explanation or support.

Taken in its entirety I am not satisfied that there is any rental arrear for this tenancy that would form the basis for a monetary award. It would be reasonable to expect that a landlord would maintain records for a tenancy. If there was an arrear it would be reasonable that the amounts indicated would be consistent or there would be some information about partial payments reducing the amount of the arrear. The landlord failed to provide cogent information as to the reason for the different amounts indicated.

I find the landlord to be an unreliable witness who failed to respond to direct questions, gave vague, rambling testimony which did not address the questions posed and spent much of their time complaining about previous hearings rather than provide evidence in support of their present application.

While there may be an arrear for this tenancy the landlord failed to provide evidence to verify the amount of their claim despite being given multiple opportunities. I find that the landlord, through their failure to respond to questions posed, have failed to meet their evidentiary burden on a balance to establish their claim. Consequently, I dismiss the landlords' application without leave to reapply.

### Conclusion

The applications of both the tenants and the landlords 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: December 13, 2021

---

Residential Tenancy Branch