



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **FFL, MNR-DR, OPR-DR**

### **Introduction**

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

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants 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 given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of reconvened hearing and evidence and Interim Decision by registered mail sent on or about March 22, 2022. While the landlord did not provide a Canada Post tracking number, they gave cogent, detailed and consistent testimony and based on the undisputed evidence I find the tenants each deemed served with the landlord's materials on March 27, 2022, 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 the amount of their monetary claim in their application saying that additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$7,800.00.

The landlord stated that the tenants have vacated the rental unit prior to the hearing and withdrew the portion of their application seeking an Order of Possession.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?  
Are the landlords entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. The monthly rent for this tenancy was \$2,600.00 payable on the first of each month. A security deposit of \$1,300.00 was collected at the start of the tenancy and is still held by the landlord. The tenants failed to pay rent as required on January 1, 2022 and February 1, 2022 and the landlord issued 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2022 indicating a rental arrear of \$5,200.00. The 10 Day Notice was served on the tenants by posting on the rental unit door on February 2, 2022.

The tenants failed to pay the outstanding rent or file an application to dispute the 10 Day Notice. The landlord filed their application for Direct Request proceeding on February 16, 2022 and served the notice of Direct Request proceeding on or about that date. The tenants failed to pay rent as required under the signed tenancy agreement on March 1, 2022.

The matter was reconvened to a participatory hearing by an Interim Decision of the Branch dated March 22, 2022.

The tenants have vacated the rental unit at some point prior to the hearing without paying the outstanding rental arrear. The landlord testified that as of the date of this hearing, June 24, 2022, the total arrear for this tenancy is \$7,800.00.

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 that monthly rent for this tenancy is \$2,600.00 pursuant to the signed tenancy agreement. I accept the evidence of the landlord that the tenants failed to pay rent as required under the agreement and there is a total arrear of \$7,800.00 as at June 24, 2022, the date of the hearing. Accordingly, I find the landlords are entitled to a monetary award in that amount.

As the landlords were successful in their application they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords 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 \$6,600.00, allowing for the recovery of the rental arrear and the filing fee and to retain the security deposit for this tenancy. The tenants must be served with this Order as soon as possible. Should the tenants 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 24, 2022

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Residential Tenancy Branch