



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **LRE, CNR, LAT**

**OPR-DR, MNR-DR, FFL**

### **Introduction**

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

The tenants applied for:

- An order suspending the landlord’s right to enter the rental unit pursuant to section 70;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 47 and 55; and
- Authorization to change the locks to the rental unit pursuant to section 31.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The applicant/tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord

acknowledged being served with the tenants' Application for Dispute Resolution Proceedings Package. The landlord BP testified that she served the tenant RM with the Notice of Dispute Resolution Hearing package via registered mail on May 3, 2022. The tracking number for the mailing is recorded on the cover page of this decision. The tenant RM is deemed served with the Notice of Dispute Resolution Proceedings package on May 8, 2022, five days after it was sent via registered mail pursuant to sections 89 and 90 of the Act. The landlord did not name the second cross-applicant/tenant SJB as a respondent to their application and testified that they were only seeking a monetary order against the tenant RM as their "main" tenant.

### Preliminary Issue

At the commencement of the hearing, the landlord testified that the tenants moved out of the rental unit on or about June 27, 2022. The rental unit is back in their possession, and they do not require an Order of Possession. Based on this undisputed testimony, I find the tenants accepted the validity of the landlord's notice to end tenancy or otherwise agreed to terminate the tenancy and the tenants' application to cancel the notice to end tenancy is dismissed on this basis. As such, it is not necessary for me to determine on the merits whether the Notice to End tenancy was valid and I make no findings with respect to its validity. As the tenants have already moved out of the rental unit, it is not necessary for an order of possession to be granted.

Pursuant to section 4(1)(f), I find the tenancy ended on June 27, 2022, the date the tenants vacated the unit. Consequently, the remainder of the tenants' application is dismissed without leave to reapply.

The landlords' application seeking an Order of Possession is likewise dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

### Background and Evidence

The landlord gave the following undisputed testimony. The tenancy agreement states rent is \$2,500.00 per month, however the parties agreed that rent is only \$2,400.00 per month. At the commencement of the tenancy, the landlord collected a security deposit of \$1,250.00.

The tenants paid rent up until the end of March 2022 but didn't pay rent for April. The landlord served the tenant with a notice to end tenancy for unpaid rent on April 5, 2022.

Since serving the notice to end tenancy, the tenants did not pay April's rent of \$2,400.00. They also failed to pay rent for May or June of 2022.

### Analysis

The relevant sections of the Act are 7, 26 and 67.

**7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

**26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the undisputed testimony of the landlord, I find the tenant RM was obligated to pay rent in the amount of \$2,400.00 per month pursuant to section 26 of the Act and failed to do so for the months of April, May and June 2022. Pursuant to section 67, the landlord is entitled to compensation as follows: [ $\$2,400.00 \times 3 = \textbf{\$7,200.00}$ ].

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

The landlord continues to hold the tenant's security of **\$1,250.00**. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award.

Item	Amount
Rent for April, May and June 2022	\$7,200.00
Filing fee	\$100.00
Less security deposit	(\$1,250.00)

<b>Total</b>	<b>\$6,050.00</b>
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Conclusion

The tenants' application is dismissed without leave to reapply.

I award the landlord a monetary order against the tenant RM in the amount of  
**\$6,050.00.**

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: August 08, 2022

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Residential Tenancy Branch