



# 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

The Landlords apply for the following relief under the *Residential Tenancy Act* (the “Act”):

- an order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy signed on February 24, 2022 (the “10-Day Notice”);
- a monetary order pursuant to s. 67 for unpaid rent and/or utilities; and
- return of their filing fee pursuant to s. 72.

The Landlords’ application was filed as direct request in which a decision was rendered on May 18, 2022 in which the adjudicator granted an order of possession and monetary order. The Tenants filed a review application, which was granted following the review consideration decision dated May 30, 2022. The matter was remitted back for a review hearing.

K.K. and M.K. appeared as the Landlords. They were represented by K.J. as their agent.

The Tenants did not appear, nor did someone appear on the Tenants behalf. Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords’ original application materials were served via registered mail sent on April 21, 2022, which is supported by tracking receipts for each of the named

respondents. I find that the Landlords' original application materials were served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenants were served with the Landlords original application materials on April 26, 2022.

#### Preliminary Issue – Application on Review

The review decision of May 30, 2022 ordered that a new hearing of the original application take place, which is supported by the guidance provided by Policy Guideline #24 and s. 82(2) of the *Act*. The review had been granted on the basis that the Landlords may have misled the adjudicator with respect to service of the 10-Day Notice. At the hearing, the Landlords confirmed service of the 10-Day Notice as described in the proof of service provided to the Residential Tenancy Branch.

I was advised, however, by the Landlords' agent that the Tenants vacated the rental unit on June 1, 2022. Based on the undisputed testimony of the Landlords' agent, I find that the tenancy ended on June 1, 2022. The Landlords, therefore, no longer require an order of possession. Thus, the issue of whether the 10-Day Notice was served is no longer relevant given no order of possession is required. Accordingly, the sole issue that remains is related to that of unpaid rent and utilities and the return of the Landlords' filing fee.

#### Preliminary Issue – Service of Additional Materials and Amendment

The Landlords' agent advised that an amendment had been filed and that some additional evidence was submitted to the Residential Tenancy Branch. However, the Landlords' agent further advised that the Tenants vacated the rental unit without providing a forwarding address and that the Landlords had no means of serving their additional materials. I enquired whether the Landlords had obtained a substitutional service order and was told that they did not.

Applicants are required to serve their materials in the methods set out under s. 89 of the *Act* and in accordance with their service obligations under the Rules of Procedure. In this instance, the Landlords admit that their additional materials were not served. Given that these materials were not served, I do not accept them or consider them as part of this application.

With respect to the amendment request, the Landlords had filed a paper amendment pursuant to Rule 4.1 of the Rules of Procedures seeking an additional amount for

unpaid rent. As mentioned above, the paper amendment was not served. However, Rule 4.2 of the Rules of Procedure permits amendments of applications at the hearing under circumstances which are reasonably foreseeable and states the following:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The Landlords' agent testified to additional amounts of rent owed since the 10-Day Notice signed by the Landlords. I find that Rule 4.2 is triggered under the circumstances such that the additional rent claim could be reasonably anticipated based on the Landlord's application for unpaid rent and utilities. Accordingly, I permit the Landlords' inclusion of these amounts to their claim.

#### **Issues to be Decided**

- 1) Are the Landlords entitled to an order for unpaid rent and utilities?
- 2) Are the Landlords entitled to the return of their filing fee?

#### **Background and Evidence**

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlords evidence includes a copy of the tenancy agreement which sets out the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on October 17, 2021.
- The tenancy was for a fixed six-month term after which point it reverted to a month-to-month tenancy.
- Rent of \$1,200.00 was payable on the first day of each month.
- The Tenants paid a security deposit of \$600.00 to the Landlords.

The tenancy agreement further set out that the Tenants were responsible for paying heat and electricity as it was not included in rent.

The Landlords' agent testified that the Tenants failed to pay rent on February 1, 2022 but made partial payments later such that \$50.00 was still owing for February rent. This point is confirmed in the Landlord's direct request worksheet served in the original application materials. The Landlords' agent further testified that the Tenants failed to pay rent at all for the months of March, April, and May 2022.

The Landlords' agent further testified that the Tenants had failed to pay utilities as per their obligation under the tenancy agreement. I was directed to a written demand dated March 8, 2022 in which the Landlords demanded payment of \$627.43 for outstanding utilities from October 17, 2021 to March 8, 2022. I was advised that the demand included copies of the utility statements, which were also put into evidence by the Landlords. To be clear, all this evidence was served as part of these proceedings in the registered mail sent on April 21, 2022.

### Analysis

The Landlord seeks an order for unpaid rent and utilities.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

I accept the undisputed testimony of the Landlords' agent that the Tenants failed to pay rent as per their obligation under the tenancy agreement. Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the

*Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. The *Act* proscribes a set of limited circumstances in which monies claimed by the Tenant can be deducted from rent, which include:

1. Where a tenant has paid a security deposit or pet damage deposit above that allowed by s. 19(1), then the amount that was overpaid may be deducted from rent (see s. 19(2)).
2. The reimbursement of costs borne by a tenant for emergency repairs after the process contemplated by s. 33(5) have been followed (see s. 33(8)).
3. Where a landlord collects rent following a rent increase that does not comply with the amount proscribed by the regulations, then the tenant may deduct the overpayment from rent (see s. 43(5)).
4. As ordered by the Director pursuant to ss. 65 and 72.

I have not been made aware of anything that would lead me to conclude any of the above circumstances would be presently applicable. Accordingly, I find that the Tenants breached their obligation to pay rent as per the tenancy agreement and s. 26 of the *Act*. This breach gives rise to the Landlords claim for compensation for the unpaid rent. I find that the Landlords could not have mitigated their damages under the circumstances as the Tenants continued to occupy the rental unit.

I accept the Landlords' undisputed evidence that rent was unpaid as follows:

Month	Rent Due	Rent Paid	Difference
February 2022	\$1,200.00	\$1,150.00	-\$50.00
March 2022	\$1,200.00	\$0.00	-\$1,200.00
April 2022	\$1,200.00	\$0.00	-\$1,200.00
May 2022	\$1,200.00	\$0.00	-\$1,200.00
<b>Total Unpaid Rent</b>			<b>\$3,650.00</b>

I find that the Landlords have established a monetary claim for unpaid rent totalling \$3,650.00.

I further accept the Landlords undisputed evidence that the Tenants had an obligation to pay utilities under the tenancy agreement and that the Landlords made a demand for payment of \$627.43 on March 8, 2022. Based on the Landlords' undisputed evidence, I find that the Tenants breached their obligation to pay utilities and further find that the

Tenants were responsible for paying \$627.43 for utilities inclusive of the period from October 17, 2021 and March 8, 2022. This could not have been mitigated by the Landlords under the circumstances.

I find that the Landlord's have established a total claim for unpaid rent and utilities totalling \$4,277.43 (\$3,650.00 + \$627.43).

### Conclusion

The Tenants moved out of the rental unit on June 1, 2022. As the tenancy is over, the Landlords' application for an order of possession is moot. This portion of the claim is dismissed without leave to reapply.

The Landlords have established a monetary claim for unpaid rent and utilities totalling \$4,227.43.

The Landlords were successful in their application. I find they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I direct that the Tenants pay the Landlords' \$100.00 filing fee.

Pursuant to s. 72(2) of the *Act*, I direct that the Landlords withhold the Tenants' \$600.00 security deposit in partial satisfaction of the amount owed by the Tenants.

I make a total monetary award taking the following into account:

Item	Amount
Unpaid rent and utilities	\$4,227.43
Landlords' filing fee	\$100.00
Less security deposit retained by the Landlords as per s. 72(2) of the <i>Act</i>	-\$600.00
<b>Total</b>	<b>\$3,727.43</b>

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenants pay **\$3,727.43** to the Landlords.

It is the Landlords' obligation to serve the monetary order on the Tenants. If the Tenants do not comply with the monetary order, it may be filed by the Landlords with 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: September 27, 2022

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Residential Tenancy Branch