



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, OLC, FFT**

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

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

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;
- A monetary order for damages caused by the tenant or the tenant's guests pursuant to sections 7 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both parties attended the hearing. As both parties were present, service of documents was confirmed. Both parties acknowledged service of the others' Notice of Dispute Resolution Proceedings package and stated they had no concerns with timely service of documents. The tenant also acknowledged service of the landlord's two amendments filed August 8 and September 26<sup>th</sup>.

### **Preliminary Issue**

Both parties confirmed that the tenant had vacated the rental unit on August 31, 2022. As such, I find the tenancy ended on that date pursuant to section

44(1)(f). Consequently, the application to dispute the notice to end tenancy is dismissed without leave to reapply. Likewise, the parties are no longer bound by a landlord/tenant relationship and the tenant's application seeking an order that the landlord comply with the Act is dismissed without leave to reapply.

Likewise, the landlord's application seeking an Order of Possession for unpaid rent is dismissed without leave to reapply.

#### Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for damages?

Can the landlord recover the filing fee?

#### Background and Evidence

The landlord gave the following testimony. The rental unit is a lower unit in the landlord's house. The tenant rents a room in the lower unit, shared with the landlord's daughter and a third roommate. The landlord/owner did not share a bathroom or kitchen facility with the tenant.

The tenancy began on July 1, 2021 with rent set at \$600.00 per month. At the beginning of the tenancy, the landlord collected a \$300.00 security deposit which she continues to hold. The landlord does not dispute the tenant paid rent monthly, however there is a clause in the tenancy agreement addendum which reads:

*friends sleep over please let your roommates an owner know. If more than one night, a charge of \$15 per night per guest advanced to the owner at the starting of the sleepover.*

The landlord testified that the tenants brother spent July 8 through to August 31 as a guest of the tenant and must compensate the landlord with \$825.00.

The tenancy ended August 31<sup>st</sup> and the tenant signed a form rtb-51 [address for service] form, advising the landlord of an email address for service. A copy of the form was not provided as evidence for this hearing. The landlord testified that the tenant damaged a table that was in her room, and she seeks \$50.00 as compensation for the damaged table. The landlord also seeks to recover \$6.00 for a replacement key which the tenant lost.

The tenant testified that she does not dispute the table damage or the key cost.

The tenant testified that she told the landlord that she could not afford to pay the landlord for the guest fee charged by the landlord while her brother visited. She was willing to pay more rent, but not a \$15.00 per night fee. She called the Residential Tenancy Branch and was advised that the landlord could not impose a restriction on guests or charge a fee. The tenant did not pay the fee to the landlord before moving out.

### Analysis

The tenant did not dispute the landlord's claim for the damaged table or the key replacement fee. Consequently, the landlord is awarded **\$56.00** in compensation pursuant to section 67 of the Act.

I refer the parties to section 5 of the Residential Tenancy Act and section 5 of the Residential Tenancy Regulations.

### **Section 5 Residential Tenancy Regulations**

#### **Prohibited fees**

- 5 (1)A landlord must not charge a guest fee, whether or not the guest stays overnight.
- (2)A landlord must not charge a fee for replacement keys or other access devices if the replacement is required because the landlord changed the locks or other means of access.
- (3)A landlord must not charge a fee in relation to any cost incurred by the landlord to repay a deposit as described in section 38 (8) (c) of the Act [*return of deposit*].

### **Section 5 of the Residential Tenancy Act:**

#### **This Act cannot be avoided**

- 5 (1)Landlords and tenants may not avoid or contract out of this Act or the regulations.
- (2)Any attempt to avoid or contract out of this Act or the regulations is of no effect.

In this case, the landlord seeks compensation for a guest fee, a fee that is prohibited under section 5(1) of the Residential Tenancy Regulations. The landlord cannot rely on

the prohibited clause of the addendum to the tenancy agreement that allows her to collect the guest fee pursuant to section 5 of the Act. As the guest fee is prohibited, I cannot award this fee to the landlord. I dismiss the landlord's application seeking to recover it.

The decision to order payment of the filing fee is discretionary upon the arbitrator and in accordance with section 72 of the Act, the filing fees of both the tenant and the landlord will not be recovered.

The landlord continues to hold the tenant's security deposit. In accordance with the offsetting provisions of section 72 of the Act, the landlord may retain \$56.00 of the tenant's security deposit and return the remaining \$244.00 to the tenant.

#### Conclusion

The remainder of the tenant's security deposit in the amount of **\$244.00** is to be returned to the tenant. I issue a monetary order in the tenant's favour in that amount.

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 05, 2022

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Residential Tenancy Branch