



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NPR GP INC (general partner for NPR Limited Partnership)  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company and the tenant attended the conference call hearing and the landlord called one witness. The parties and the witness each gave affirmed testimony and the parties provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues respecting service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on May 1, 2012 and was to expire on April 30, 2013, although the tenant moved into the rental unit on April 18, 2012. The tenant paid a pro-rated amount of rent for the first month of the tenancy

and a tenancy agreement, a copy of which was provided for this hearing, was signed by the parties on April 18, 2012 which contained the commencement and end of the fixed term. Rent in the amount of \$1,050.00 per month was payable in advance on the 1<sup>st</sup> day of each month. On April 18, 2012 the landlord collected a security deposit from the tenant in the amount of \$525.00 which is still held in trust by the landlord.

The landlord's agent further testified that the tenant told another employee of the landlord company that the tenant was too busy to do the move-in condition inspection report so the employee completed the report and left it on the counter for the tenant to review and sign, but the tenant never brought one back. The landlord had a copy but did not receive a signed copy from the tenant.

The tenant called the landlord's agent on March 17, 2013 wanting a reference for a new apartment. The landlord's agent told the tenant that the tenancy was to end at the end of April, 2013 and that a notice in writing was required. The tenant did not provide a notice in writing. During cross examination, the landlord's agent agreed that March 17, 2013 was a Sunday and the office is not open, so perhaps the tenant called on March 18.

On April 2, 2013 the tenant phoned again stating that the tenant had moved out and gave a forwarding address which someone wrote on the move-out condition inspection report. A copy of the report has been provided for this hearing and contains sections for move-in as well as move-out, and all sections are completed. The form is dated April 4, 2013 at move-out and contains a forwarding address for the tenant.

The landlord claims carpet cleaning at a cost of \$150.00, although no receipt has been provided, and the landlord's agent testified that the tenant did not clean the rental unit at all and the carpets required cleaning. The landlord also claims \$140.00 for 4 hours of general cleaning by staff cleaners. The landlord also claims \$125.00 for a missing bathroom door that the tenant had advised the landlord about during the tenancy. An invoice in the amount of \$73.51 has been provided for purchasing a new door, and the landlord claims \$65.00 as well as \$60.00 for staff maintenance to install it. The landlord also claims \$25.00 as an administration fee for the tenant moving out of the rental unit, and \$25.00 for late rent for the month of April, 2013 which is provided for in the tenancy agreement.

The landlord's witness testified that when the tenancy agreement was signed on April 18, 2013 the tenant was given keys to the rental unit and the parties agreed to meet at the rental unit for a move-in condition inspection, but the tenant didn't show up. The witness called the tenant who said it was not convenient and asked the witness to leave the form on the counter. The witness told the tenant that it had to be completed

together, and no further conversation took place. The witness completed the inspection report without the tenant on April 18, 2012.

The witness further testified that at move-out there was no way to reach the tenant to arrange a move-out condition inspection. On March 28, 2013 the witness saw the tenant starting to move out of the rental unit and told the tenant that the inspection was required and that when the tenant was ready and the rental unit was clean, to call the witness, but the tenant never called. The witness completed the move-out condition inspection report without the tenant present on April 4, 2013. The rental unit had not been cleaned, the fridge and stove were not cleaned, the bathroom door was missing, and garbage and cigarette butts were left in the rental unit.

The witness further testified that the forwarding address on the move-out condition inspection report was not written there by the witness, and the witness has no idea who wrote it there or when.

During cross examination, the witness was asked why the tenant wasn't called about the move-out condition inspection, to which the witness replied that the parties had spoken about it on March 28, 2013.

The tenant testified that the witness is mistaken about the testimony, and that the witness told the tenant the move-in condition inspection report would be left on the counter; the tenant did not ask the witness to leave it there.

The tenant misplaced the tenancy agreement and asked the landlord's agents when the lease agreement expired, but no one could provide that information.

The tenant also testified that the windows in the rental unit leaked causing mould to form in the tenant's bedroom and the bedroom of the tenant's child. Despite requests for repairs, the landlord did not complete them, but removed gyprock leaving the wood inside the walls exposed. The tenant moved from the rental unit as a result of a lack of repairs.

The tenant further testified that on March 1, 2013 when the tenant paid rent, the tenant asked about the end of the fixed term and no one could provide that information, but the landlord's witness told the tenant that a new lease had to be signed on April 1, 2013 or the tenant would have to move out.

The tenant did not give written notice to vacate the rental unit and does not dispute the damages.

## Analysis

Firstly, dealing with the condition inspection reports, the *Residential Tenancy Act* puts the onus on the landlord to ensure that the tenant is offered at least 2 opportunities to conduct inspection reports at move-in and at move-out and the regulations go into great detail of how those opportunities are to be provided. In this case, the landlord's agent completed both inspections without the tenant present and without offering at least 2 opportunities for the tenant to be present. The *Act* also states that the reports are evidence of the condition of the rental unit at the beginning and end of a tenancy. However, where only one party has taken part in the inspection, I have no way of determining whether or not the tenant agreed with either report. The *Act* also contains consequences for failing to do so, being that the landlord's right to claim against the security deposit for damages is extinguished. In this case, I find that the landlord's right to claim against the security deposit for damages is extinguished.

I find it odd that a landlord would not be able to provide a tenant with accurate information about the end of a fixed term tenancy, however, it's clear in the evidence before me that the parties agreed to a fixed term to expire on April 30, 2013. The tenant has not paid rent for that month, and I find that the landlord is entitled to a monetary order in the amount of \$1,050.00. I am also satisfied that the tenancy agreement provides for a \$25.00 late fee, and I find that the landlord is entitled to that amount.

With respect to the damage claim, the onus is on the landlord to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In this case, the landlord claims \$150.00 for carpet cleaning but has provided no evidence of that cost. The landlord's agent did not testify that it was done by staff personnel but that the receipt was not provided. Therefore, I find that the landlord has failed to satisfy element 3 in the test for damages.

With respect to the missing bathroom door and cleaning costs, the tenant does not dispute those costs, and I am satisfied that the landlord has established a monetary claim for general cleaning in the amount of \$140.00 and \$125.00 for the bathroom door.

With respect to the administration fee for moving out, the regulations specifically state that a landlord may not charge any non-refundable fees except for a fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment for rent if the tenancy agreement provides for that fee, and a service fee charged by a financial institution for the return of a tenant's cheque. The landlord's claim for the administration fee is hereby dismissed.

Although the tenant testified that moving out was necessary due to the condition of the rental unit, the tenant has not made an application and I cannot rule on whether or not the tenant was justified in moving out before the end of the fixed term.

In summary, I find that the landlord has established a monetary claim in the amount of \$1,075.00 for rent and late fees, \$140.00 for general cleaning and \$125.00 for the missing bathroom door, for a total of \$1,340.00. The landlord's claims for an additional administrative fee and for carpet cleaning are hereby dismissed without leave to reapply. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

I hereby order the landlord to keep the security deposit in the amount of \$525.00 and I grant the landlord a monetary order for the balance in the amount of \$865.00.

### Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$865.00.

This order is final and binding on the parties and may be enforced.

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: July 03, 2013

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Residential Tenancy Branch

