



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 MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. The agent was advised of the hearing process and was given the opportunity to ask questions about the hearing process during the hearing. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered. The agent testified that the Notice of Hearing was served by registered mail to the female tenant, BH, only on September 12, 2013 to the forwarding address provided verbally by the tenants on July 17, 2013. The agent stated that registered mail package included the Notice of Hearing, Application for Dispute Resolution and evidence and a tracking number was submitted in evidence by the landlord. The agent testified that the registered mail package was returned as "unclaimed". Section 90 of the *Act* indicates that documents served by registered mail are deemed served five days after they are mailed.

The agent was advised during the hearing that due to tenant BH being the only tenant to be served, if the landlord was successful with any portion of his monetary claim and a monetary order was granted, any resulting monetary order would name tenant BH only. The agent stated that he wished to proceed with the hearing and that he understood that any resulting monetary order would name the female tenant, BH, only as she was the only tenant served with the Notice of Hearing. Based on the above, I find that tenant BH was deemed served in accordance with the *Act* as of September 17, 2013.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

- What should happen to the tenants' security deposit under the Act?

Background and Evidence

A fixed term tenancy agreement began on February 1, 2013 and required the tenants to provide vacant possession of the rental unit as of January 31, 2014. Monthly rent in the amount of \$850.00 was due on the first day of each month, and the landlord included a rental incentive of \$150.00 less per month as long as the tenants complied with the lease in full, otherwise the tenants would be responsible to repay the rental incentive if they failed to comply with the lease. The tenants paid a security deposit of \$425.00 at the start of the tenancy which the landlord continues to hold, which has accrued \$0.00 in interest to date.

The agent stated that the tenants vacated the rental unit on or about July, 10, 2013, after the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") dated July 2, 2013 by posting to the tenants' door, which the tenants did not dispute.

A condition inspection report was submitted in evidence by the landlord. According to the condition inspection report, the incoming condition inspection was completed on January 15, 2013 and the outgoing condition inspection was completed on July 16, 2013. A copy of a Notice of Final Opportunity to Schedule a Condition Inspection was submitted in evidence and indicated that July 16, 2013 at 10:15 a.m. was addressed to tenant JZ.

The landlord has claimed for \$1,976.25 comprised of the following:

Item #	Description	Amount
1	Unpaid rent for July 2013 (\$700.00) plus late fee of \$25.00	\$725.00
2	Carpet cleaning including taxes	\$131.25
3	Repair of two holes	\$60.00
4	Furniture removal and disposal costs	\$60.00
5	Replace keys and change locks	\$50.00
6	Recovery of rental incentive (due to breach of fixed term tenancy @ \$150.00 per month X 6 months)	\$900.00
7	Recovery of filing fee	\$50.00
TOTAL		\$1,976.25

Item #1 is for \$725.00 for unpaid rent for July 2013 of \$700.00, plus a late fee of \$25.00 in accordance with #10 "Arrears" in the tenancy agreement. The agent stated that the tenants breached a fixed term tenancy by failing to pay rent for the month of July 2013 and were served a 10 Day Notice and vacated based on that undisputed 10 Day Notice.

The agent stated that the tenants vacated without paying rent for July 2013. The landlord is not seeking loss of rent after July 2013.

Item #2 is for \$131.25 for carpet cleaning which includes taxes. The agent testified that the tenants left the rental unit carpets in dirty condition. The landlord submitted a carpet cleaning receipt in evidence which supports that the landlord suffered a loss of \$131.25 to have the carpets cleaned in the rental unit. The condition inspection report submitted in evidence supports that the carpets needing cleaning at the end of the tenancy.

Item # 3 is for \$60.00 to repair two holes to the bedroom and bathroom doors. The landlord submitted 15 photos in evidence. The condition inspection report submitted in evidence supports this portion of the landlord's claim.

Item #4 is for \$60.00 for furniture removal and disposal costs. The agent confirmed during the hearing that there was no receipt submitted for this portion of the landlord's claim.

Item #5 is for \$50.00 for the replacement of rental unit keys and to change the locks of the rental unit. The agent stated that although a receipt was not submitted in evidence, the landlord's maintenance person replaced the locks as the landlord makes a bulk purchase of locks and they replace locks and keys only when necessary and charge a set fee based on the actual cost of the locks and keys. The agent stated that the tenants did not return the rental unit keys, which resulted in this portion of the landlord's claim.

Item #6 is for \$900.00 to recover the rental incentive as per #45 of the tenancy agreement, the rental incentive which reads:

"45. OTHER. e) An incentive has been applied to the initial term of the lease only, and is equivalent to this one time incentive in the amount of \$150.00 will be applied monthly. The lease entered by the above tenant(s) and [name of landlord company] must be fulfilled in its entirety or the incentive will be considered void. Should the agreement NOT BE FULFILLED the tenant(s) will be liable for repayment of said incentive."

[reproduced as written]

The agent testified that they are seeking \$900.00 which is comprised of six months at \$150.00 per month as the tenants breached the fixed term tenancy by their own actions having failed to pay rent and did not fulfill the conditions of their fixed term lease or tenancy agreement as a result.

Item #7 is for the recovery of the \$50.00 filing fee which will be addressed at the end of this decision below.

Analysis

Based on the documentary evidence and the undisputed testimony of the agent, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Item #1 – The landlord has claimed \$725.00 for unpaid rent for July 2013 of \$700.00, plus a late fee of \$25.00 in accordance with #10 “Arrears” in the tenancy agreement. I accept the undisputed testimony of the agent that the tenants breached a fixed term tenancy by failing to pay rent for the month of July 2013 and were served a 10 Day Notice and vacated based on that undisputed 10 Day Notice. I find that #10 of the tenancy agreement supports that a late fee of \$25.00 may be assessed against the tenants if a rent payment is late. As a result, **I find** that the landlord has met the burden of proof for this portion of their claim and is entitled to **\$725.00** comprised of unpaid rent for the month of July 2013 of \$700.00, plus a \$25.00 late fee.

Item #2 – The landlord has claimed \$131.25 for carpet cleaning which includes taxes. I accept the agent’s undisputed testimony that the tenants left the rental unit carpets in dirty condition which is supported by the condition inspection report submitted in evidence supports that the carpets needing cleaning at the end of the tenancy. Furthermore, the landlord submitted a carpet cleaning receipt in the amount of \$131.25. Therefore, **I find** that the landlord has met the burden of proof for this portion of their claim and is entitled to **\$131.25** for carpet cleaning, which includes taxes.

Item #3 – The landlord has claimed \$60.00 to repair two holes to the bedroom and bathroom doors. Although the 15 photos in evidence are blurry, I find the condition inspection report submitted in evidence supports this portion of the landlord’s claim. As a result, **I find** that the landlord has met the burden of proof for this portion of their claim and is entitled to **\$60.00** to repair two holes in the bathroom and bedroom doors, and amount which I find to be reasonable.

Item #4 – The landlord has claimed \$60.00 for furniture removal and disposal costs. The landlord failed to submit a receipt or supporting evidence for this portion of the

landlord's claim. As a result, **I dismiss** this portion of the landlord's claim due to insufficient evidence, **without leave to reapply**.

Item #5 – The landlord has claimed \$50.00 for the replacement of rental unit keys and to change the locks of the rental unit. The agent stated that although a receipt was not submitted in evidence, the landlord's maintenance person replaced the locks as the landlord makes a bulk purchase of locks and they replace locks and keys only when necessary and charge a set fee based on the actual cost of the locks and keys. The outgoing condition inspection report supports that the tenants did not return the rental unit keys at the end of the tenancy.

Section 37 of the *Act*, requires that tenants return the rental unit keys at the end of the tenancy. I find the tenants breached section 37 of the *Act* by failing to return the rental unit keys at the end of the tenancy. As a result, **I find** that the landlord has met the burden of proof for this portion of their claim and is entitled to **\$50.00** to replace the keys and locks to the rental unit.

Item #6 – The landlord has claimed \$900.00 to recover the rental incentive as per #45 of the tenancy agreement. I find that the rental incentive wording as described above is clear and that due to the tenants breaching the fixed term tenancy agreement early by failing to pay rent when it was due, that the landlord has met the burden of proof for this portion of their claim. Therefore, **I grant** the landlord **\$900.00** in compensation comprised of recovery of the rental incentive of \$150.00 for six months as claimed by the landlord.

Item #7 relates to the recovery of the \$50.00 filing fee. As the landlord's application had merit, **I grant** the landlord the recovery of filing fee in the amount of **\$50.00**.

The landlord continues to hold the tenants' security deposit \$425.00 which has accrued \$0.00 since the start of the tenancy.

Monetary Order – **I find** that the landlord has established a total monetary claim in the amount of **\$1,916.25** and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

Item #	Description	Amount
1	Unpaid rent for July 2013 (\$700.00) plus late fee of \$25.00	\$725.00
2	Carpet cleaning including taxes	\$131.25
3	Repair of two holes	\$60.00
5	Replace keys and change locks	\$50.00
6	Recovery of rental incentive (due to breach of fixed term tenancy @ \$150.00 per month X 6 months)	\$900.00
7	Recovery of filing fee	\$50.00
	Subtotal	\$1,916.25

	<i>(Less tenants' security deposit of \$425.00)</i>	<i>-(425.00)</i>
	TOTAL OWED BY THE TENANTS TO THE LANDLORD	\$1,491.25

I ORDER the landlord to retain the tenants' full security deposit of \$425.00 in partial satisfaction of the landlord's claim. **I grant** the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenants to the landlord in the amount of **\$1,491.25**. This order must be served on the female tenant, BH, and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$1,916.25. The landlord has been ordered to retain the tenants' full security deposit of \$425.00 in partial satisfaction of their claim. The landlord has been granted a monetary order under section 67 for the balance due in the amount of \$1,491.25. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 14, 2014

Residential Tenancy Branch

