



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nipro Developments Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, MNR, MND, MNSD, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The male Agent for the Landlord stated that on October 11, 2013 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were sent to each Tenant, via registered mail, at the forwarding address provided at the end of the tenancy. The Landlord submitted Canada Post Documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing.

The Landlord submitted documents to the Residential Tenancy Branch. The male Agent for the Landlord stated that copies of these documents were served to the Tenant, via regular mail, on December 13, 2013. In the absence of evidence to the contrary, I find that these documents were served to the Tenant in accordance with section 88 of the *Act*, and they were accepted as evidence for these proceedings.

### Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent/loss of revenue; to compensation for damage to the rental unit; and to retain all or part of the security deposit paid by the Tenant?

### Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows the parties entered into a fixed term tenancy agreement that began on January 01, 2013 and was to continue until December 31, 2013, at which time it was to continue as a periodic

tenancy. The agreement declares that the Tenant is required to pay rent of \$2,076.00 by the first day of each month. The male Agent for the Landlord stated that a condition inspection report was completed at the start of the tenancy, a copy of which was submitted in evidence.

The male Agent for the Landlord stated that the Tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00. He stated that the Tenant moved into the rental unit on December 20, 2011, at which time a condition inspection report was completed.

The male Agent for the Landlord stated that the Tenant informed the Landlord of their intent to end the tenancy at the end of September. A copy of this email, dated August 30, 2013, was submitted in evidence.

The male Agent for the Landlord stated that he is not certain when the rental unit was vacated but when he went to the unit on October 01, 2013 the rental unit had been vacated. He stated that the Tenant placed a stop payment on the rent cheque that had been tendered for September of 2013, and that no rent was collected for September of 2013. The Landlord submitted an email from the Tenant, dated September 10, 2013, in which the Tenant informs the Landlord they have moved out and are in the process of cleaning the rental unit. The Landlord is seeking compensation for unpaid rent from September of 2013.

The Landlord is seeking compensation, in the amount of \$25.00, for the September rent cheque that was returned due to the stop payment placed on it. The male Agent for the Landlord stated that the tenancy agreement does not specify that a \$25.00 NSF fee will be charged for cheques that are returned due to insufficient funds.

The male Agent for the Landlord stated that the rental unit was advertised on several websites shortly after the Landlord received notice of the Tenant's intent to vacate; that the rental unit was shown to prospective tenants while the unit was still occupied by the Tenant; and that the rental unit was re-rented on January 01, 2013. The Landlord is seeking lost revenue for the month of October, in the amount of \$2,076.00.

The male Agent for the Landlord stated that on October 01, 2013 he sent the Tenant an email, in which he informed the Tenant that he would like to meet at 4:30 on that date to inspect the rental unit. He stated that he received an email response from the Tenant, in which the Tenant informed him the Tenant was unable to attend at that time and in which the Tenant directed him to complete the inspection in his absence. Copies of these emails were submitted in evidence.

The male Agent for the Landlord stated that he made several attempts to reschedule the inspection, by telephone, after he sent this email but the Tenant refused to meet with him. He stated that he therefore completed the inspection on October 01, 2013, in the absence of either Tenant.

The Landlord is seeking compensation, in the amount of \$106.25, to replace the keys to the rental unit. The male Agent for the Landlord stated that all of the keys to the unit were not returned. The Landlord submitted a receipt that shows the Landlord paid \$106.25 to re-key locks.

The Landlord is seeking compensation, in the amount of \$175.00, to replace two key fobs. The male Agent for the Landlord stated that the Tenant paid \$75.00 for one of the fobs and that neither fob was returned. The Landlord submitted an email that confirms the cost of the fobs is \$150.00 and that the cost of a parking pass is \$25.00. The Landlord submitted a copy of a cheque stub to show that the Landlord paid \$175.00 for new fobs/parking pass.

The Landlord is seeking compensation, in the amount of \$157.50, for cleaning the rental unit. The male Agent for the Landlord stated that the fridge and stove required additional cleaning at the end of the tenancy. The Landlord submitted photographs of the rental unit that were taken at the end of the tenancy. The Landlord submitted an invoice that shows the Landlord was charged \$157.50 to clean a variety of areas in the rental unit.

The Landlord is seeking compensation, in the amount of \$945.00, for repairing damaged walls and broken closet doors. The Landlord submitted an invoice that shows the Landlord was charged \$945.00 for the repairs. The male Agent for the Landlord estimated that the repairs to the doors were \$450.00 and the repairs to the walls were \$495.00.

The Agent for the Landlord stated that a set of mirrored closet doors were damaged during the tenancy. The Landlord submitted a photograph of the damaged doors. The Landlord submitted a copy of an email, dated October 02, 2013, in which the Tenant was informed that the mirrored doors are cracked and a copy of an email response, in which the Tenant authorizes the Landlord to repair that damage.

The Agent for the Landlord stated that two televisions were mounted on two walls during the tenancy and that the Landlord had to repair and paint the walls that were damaged by the mounting screws. The Landlord submitted a photograph of the damaged walls. The Landlord submitted a copy of an email, dated October 02, 2013, in which the Tenant was informed that the wall in the living room needed to be repaired and a copy of an email response, in which the Tenant authorizes the Landlord to repair that damage.

### Analysis

On the basis of the undisputed evidence, I find that the Tenant occupied the rental unit for a portion of September of 2013 and was therefore obligated to pay the rent of \$2,076.00 that was due on September 01, 2013. On the basis of the undisputed evidence, I find that no rent was paid for September of 2013 and I therefore find that the Tenant owes the Landlord \$2,076.00 in rent for this month.

I find that the Tenant did not comply with section 45(2) of the *Act* when the Tenant ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*.

Section 7 of the *Residential Tenancy Regulation* authorizes a Landlord to collect an NSF fee only if the tenancy agreement provides for that fee. As the Landlord has not established that the tenancy agreement provides for an NSF fee, I dismiss the Landlord's application for a \$25.00 NSF fee.

On the basis of the undisputed evidence, I find that the Landlord made reasonable efforts to find a new tenant for October of 2013 and that the Landlord was not able to do so. I therefore find that the Landlord is entitled to compensation for lost revenue for that month, in the amount of \$2,076.00.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to return all of the keys to the rental unit. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances is \$106.25 for rekeying the lock.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to return two key fobs. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*. As the evidence shows that the Landlord paid \$150.00 to replace two fobs and the Tenant has already paid the Landlord \$75.00 for one fob, I find that the Landlord is entitled to compensation of \$75.00.

I note that the Landlord also paid \$25.00 for replacing a missing parking pass, which appears to have been included in the claim to replace the key fobs. As the monetary calculation did not clearly inform the Tenant that the Landlord was seeking compensation for replacing a parking pass, I have not considered a claim for a missing parking pass.

Section 37 of the *Act* requires a tenant to leave a rental unit in reasonably clean condition. On the basis of the photographs submitted in evidence, I find that the rental unit, with the exception of the stove and fridge, was left in clean condition. Although the photographs do show that the oven needed some additional cleaning and the fridge had 2 small spills that need wiping, I do not find that the additional cleaning was extensive. I therefore find that the unit was left in reasonably clean condition, as is required by the *Act*, and I dismiss the Landlord's claim for compensation for cleaning.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the damaged closet doors. I

therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances appears to be \$450.00 for replacing the doors.

On the basis of the undisputed evidence, I find that the Tenant failed to comply with section 37(2) of the *Act* when the Tenant failed to repair the walls that were damaged when televisions were mounted on the wall. I therefore find that the Landlord is entitled to compensation for any damages that flow from the Tenant's failure to comply with the *Act*, which in these circumstances appears to be \$495.00 for repairing the walls.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Section 35(2) of the *Act* stipulates that a landlord must offer a tenant at least two opportunities to participate in an inspection of the rental unit at the end of the tenancy, as prescribed by section 7 of the *Residential Tenancy Regulation*. Section 7 of the *Residential Tenancy Regulation* stipulates that a landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times and that if the tenant is not available at the date(s)/time(s) offered the landlord must propose a second opportunity in the approved form.

Residential Tenancy Branch form RTB-22 is the form that is currently approved for serving written notice of a second opportunity to participate in an inspection of the rental unit at the end of the tenancy. This form contains very important information for the tenant, including the fact that a tenant's right to the return of the security deposit or pet damage deposit is extinguished if the landlord provides two opportunities for inspection and the tenant does not participate on either occasion and that if the tenant is unable to attend the inspection, the tenant may ask another person to attend on their behalf.

In the absence of evidence that shows the Landlord provided the Tenant with a second opportunity to inspect the rental unit on the approved form and in the absence of evidence that shows the Landlord informed the Tenant of the aforementioned information regarding the Tenant's rights and obligations regarding the final inspection, I find that the Landlord failed to comply with section 35(2) of the *Act*.

Section 36(2)(a) of the *Act* stipulates that a landlord's right to claim against the security deposit or pet damage deposit for damage is extinguished if the landlord does not comply with section 35(2) of the *Act*. As I have concluded that the Landlord failed to comply with section 35(2) of the *Act*, I find that the Landlord's right to claim against the security deposit and pet damage deposit for damage is extinguished.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits.

In circumstances such as these, where the Landlord's right to claim against the security deposit has been extinguished, pursuant to section 36(2) of the *Act*, the Landlord does not have the right to file an Application for Dispute Resolution claiming against the deposit and the only option remaining open to the Landlord is to return the security deposit and/or pet damage deposit within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing. I find that the Landlord did not comply with section 38(1) of the *Act*, as the Landlord has not yet returned the deposits.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(6) of the *Act*, I find that the Landlord must pay double the pet damage deposit and security deposit to the Tenant.

### Conclusion

The Landlord has established a monetary claim, in the amount of \$5,378.25, which is comprised of \$4,152.00 in unpaid rent/lost revenue, \$1,126.25 in damages, and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. The Tenant has a monetary claim, in the amount of \$4,000.00, which is double the security deposit and pet damage deposit.

After offsetting the two amounts, I find that the Tenant owes the Landlord \$1,378.25. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain this amount from the Tenant's security/pet damage deposits, in full satisfaction of this monetary claim.

I find that the Landlord must return the remaining \$621.75 of the deposits and I grant the Tenant a monetary Order for the amount \$621.75. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims 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: January 07, 2014

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Residential Tenancy Branch

