



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NPR LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

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

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The parties entered into a fixed term tenancy which began on June 1, 2015 and was to expire on May 31, 2016. Rent in the amount of \$900.00 was payable on the first of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid by the tenants.

The landlord claims as follows:

a.	Liquidated damages	\$ 450.00
b.	Unpaid rent for July 2015	\$ 175.00
c.	Unpaid rent for August 2015	\$ 270.00
d.	Cleaning 5 hours at \$25.00	\$ 125.00
e.	Keys not returned	\$ 75.00
f.	GST	\$ 10.25
g.	Filing fee	\$ 50.00
	<b>Total claimed</b>	<b>\$1,155.20</b>

#### Liquidated damages

The landlord's agent testified that the tenant's breached the fixed term tenancy agreement and as a result they are entitled to recover liquidated damages in the amount of \$450.00. The agent stated that the tenancy agreement provides a term that if the

The tenants agree that the tenancy agreement has a liquidated damages clause and they are no disputing this portion of the landlord's claim.

#### Unpaid rent for July 2015

The landlord's agent testified that the tenants failed to pay all rent for July 2015 and there was a balance owing of \$150.00, plus \$25.00 late fee.

The tenants agree that they owe \$150.00 in unpaid rent.

#### Unpaid rent for August 2015

The witness for the landlord testified that it was not unpaid rent for August 2015. The witness stated it was the difference between the rent they collected for September 2015.

#### Cleaning

The landlord's agent testified that the tenants left items such as dishes and garbage on the counters and the floors had to be cleaned. The agent stated that food was also left in the refrigerator. The landlord seeks to recover five hours of cleaning at the rate of \$25.00 per hour. Filed in evidence are photographs.

The tenants testified they left 3 plates behind, a piece of paper, 3 curtain rods and a small white bag of garbage. The tenants stated that they forgot to remove a couple of perishable items from the refrigerator. However, the rental unit was clean. The tenant stated the amount the landlord is claiming is excessive.

### Keys not returned

The landlord's agent stated that all the keys were not returned at the end of the tenancy and 3 had to be replaced.

The tenants testified that all the keys were left in the unit at the end of the tenancy.

### GST

The landlord's agent testified that the gst is for the in house staff to clean the rental unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

#### Liquidated damages

In this case, the tenants acknowledged that they breached the fixed term agreement and are responsible for liquidated damages. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of **\$450.00**.

#### Unpaid rent for July 2015

The tenants acknowledged that they owed unpaid rent in the amount of \$150.00. The tenancy agreement indicates if rent is late the landlord is entitled to recover a late payment fee. Therefore, I find the landlord is entitled to recover unpaid rent and late fee in the total amount of **\$175.00**.

#### Unpaid rent for August 2015

In this matter, rent for August 2015, was paid. The evidence of the landlord's witness was that this was for loss of revenue for September 2015.

Since the landlord's application was not for loss of revenue for September 2015, rather it was for unpaid rent for August, which was paid. I find the landlord has failed to prove a violation of the Act by the tenants. Therefore, I dismiss this portion of the landlord's claim.

#### Cleaning

In the case, I have review the photographs submitted as evidence by the landlord. While I accept the tenants left a few items behind, I find the photograph do not support 5 hours of cleaning was required to bring the rental unit to a reasonable standard. The tenants are not responsible for any costs to bring the unit to a higher standard than stated in the Act. Therefore, I grant the landlord a nominal amount for having to remove the items left behind in the amount of **\$5.00**.

#### Keys

In this case, the tenants did not give the keys directly to the landlord. The evidence of the landlord was they only received 3 of the keys. As the tenant did not give the keys directly to the landlord, I find the tenants are responsible for the 3 missing keys as it is unreasonable to leave the keys on the counter. I find the tenants breached the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to recover the amount of **\$75.00**.

### GST

In this case, the landlord is claiming GST for in house staff to clean the rental unit; however, I am not satisfied that this amount was paid by the landlord. No receipts or invoices were provided. No GST number was provided. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$755.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the above amount for the Deposits in full satisfaction of the claim and I grant the tenants a monetary order for the balance due of their Deposits in the amount of under section 67 for the balance due of **\$145.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The landlord is granted a monetary and may keep portion of the Deposits in full satisfaction of the claim and the tenants are granted a formal order for the balance due of their Deposits.

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: May 12, 2016

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Residential Tenancy Branch