



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding (GENERAL PARTNER FOR NPR LIMITED PARTNERSHIP) NPR GP INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, OPN, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord to end the tenancy and for an Order of Possession, a Monetary Order for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on June 9, 2015. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

At the start of the conference call the Landlord said the Tenant moved out on June 30, 2016 therefore the Landlord's request for an Order of Possession is withdrawn because the Landlord has possession of the unit.

Issues(s) to be Decided

1. Is there a loss or damage under the Act, regulations or tenancy agreement and if so how much?
2. Is the Landlord entitled to compensation for the loss or damage and if so how much?
3. Is the Landlord entitled to retain the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2015 for a fixed term with an expiry date of September 30, 2016. Rent was \$1,100.00 per month payable in advance of the 1st day of each month. The Landlord continued to say that a \$100.00 per month incentive was given to the Tenant for signing a 1 year tenancy agreement. The Landlord said the incentive was in affect as long as the Tenant fulfilled the tenancy agreement and if the Tenant broke the tenancy agreement the incentive is to be repaid. Further the Tenant paid a security deposit of \$547.50 on September 18, 2015. The Landlord said a move

in condition inspection report was completed and the move out inspection report done but was not signed by the Tenant as she did not participate in the inspection.

The Landlord said on June 2, 2016 the Tenant gave written notice to move out of the rental unit for July 1, 2016. The Landlord said the tenancy ended on June 30, 2016. The Landlord said this was a fixed term tenancy agreement until September 30, 2016; therefore the Tenants broke the tenancy agreement by moving out early.

The Landlord said she is requesting the following compensation:

1. Repayment of the \$100.00 per month incentive for 9 months in the amount of \$900.00.
2. Lost rental income for July, August and September, 2016 in the amount of \$1,100.00 per month for a total of \$3,300.00.
3. To collect the liquidated damages fee of \$550.00 which is in the tenancy agreement and is for the Landlord's time and costs to rent the unit to a new tenant.
4. To recover the \$100.00 filing fee for this application.

The Landlord continued to say she sent in a late request for the cost of carpet cleaning of \$175.00 and general cleaning of \$250.00. The Landlord asked if these claims could be included in the application.

The Landlord said the total claim is for \$4,750.00 plus the cleaning costs of \$425.00.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

The Tenant did not give the Landlord proper notice to end the tenancy and the Tenant does not have the right under the Act to withhold part or all of the rent; therefore I find the Tenant is responsible for the rent by breaching the tenancy agreement. I award the Landlord the July, 2016 rent of \$1,100.00. The potential rental loss for August and September, 2016 are not proven as of yet; therefore I dismiss these claims with leave to reapply if the loss occurs.

Further as the terms of the incentive of \$100.00 and the terms of repayment of the incentive if the tenancy agreement is broken and the liquidated damage claim are both in the tenancy agreement and are initialled by both the Landlord and Tenant; I award

the Landlord the recovery of the incentives in the amount of \$900.00 and the liquidated damage claim in the amount of \$550.00.

Further as the cleaning claims are not in the application; I dismiss the Landlord's request to include these claims in this application with leave to reapply.

As the Landlord has been partially successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 and s. 72 of the Act to keep the Tenant's security deposit in partial payment of lost rental income. The Landlord will receive a monetary order for the balance owing as following:

	Lost rental income:	\$ 1,100.00
	Recover incentive	\$ 900.00
	Liquated damages	\$ 550.00
	Recover filing fee	\$ 100.00
	Subtotal:	\$2,650.00
Less:	Security Deposit	\$ 547.50
	Subtotal:	\$ 547.50
	Balance Owing	\$ 2,102.50

Conclusion

A Monetary Order in the amount of \$2,102.50 has been issued to the Landlord. A copy of the Order must be served on the Tenant: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 12, 2016

Residential Tenancy Branch