



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 Code MNR, MND, MNSD, FF

Introduction

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

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 15, 2016, a Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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 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 July 1, 2015 and was to expire on June 30, 2016. Rent in the amount of \$685.00 was payable on the first of each month. A security deposit of \$342.50 was paid by the tenant. The tenancy ended on September 25, 2015. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Liquidated damages	\$342.50
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b.	Cleaning	\$ 75.00
c.	Repairs	\$ 35.00
d.	Keys and Laundry card	\$ 50.00
e.	Administrative fee and GST	\$ 26.25
f.	Filing fee	\$100.00
	Total claimed	\$628.75

Liquidated damages

The landlord's agent testified that the tenant breached the fixed term agreement when they vacated the rental unit prior to the expiry of the fixed term. The agent stated that the tenancy agreements indicates that they would be entitled to recover liquidate damages in the amount of \$342.50.

Cleaning

The landlord's agent testified that the tenant did not clean the rental unit. The landlord stated the appliances had to be cleaned and the floors had to be swept and washed. The agent stated that it took 3 hours to clean at the rate of \$25.00. The landlord seeks to recover cleaning costs in the amount of \$75.00.

Repairs

The landlord's agent testified that the tenant also caused damage to the walls, by what appears to be dents from their furniture. The landlord seeks to recover for the repair of the walls the amount of \$35.00.

Keys and Laundry card

The landlord's agent testified that the tenant failed to return the keys and the laundry card at the end of the tenancy. The agent stated that they seek to recover the cost of the keys and card in the amount of \$50.00.

Administrative fee and GST

The landlord's agent testified that they seek to recover the administrative fees for the doing paper for breaking the lease.

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. In this case, the landlord has the burden of proof to prove their claim.

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

Section 45 of the Residential Tenancy Act states: (fixed term)

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, The evidence of the landlord's agent was that the tenant breached the fixed term tenancy by ending the tenancy on September 25, 2015. However, under the Act the tenant was not entitled to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was June 30, 2016, as stated in the tenancy agreement.

Since I have found the tenant breached the fixed term agreement, I find the landlord is entitled to recover the liquidated damages clause as specified in the tenancy agreement in the amount of **\$342.50**.

Cleaning

Section 37 of the Residential Tenancy Act states:

37 (2) When a tenant vacates a rental unit, the tenant must

leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the undisputed evidence of the landlord's agent that the rental unit was not left reasonable clean, as the appliances were not cleaned. I further accept that the floors were not cleaned and needed to swept and washed. I find the tenant breached the Act, when they failed to leave the rental unit reasonably clean and this caused losses to the landlord. I find the amount claimed by the landlord reasonable. Therefore, I find the landlord is entitled to recover cleaning costs in the amount of **\$75.00**.

Repairs

I accept the undisputed evidence of the landlord's agent that the tenant caused damage to the walls, by denting, from what they believed was caused by furniture. This is not normal wear and tear. I find the tenant breached the Act, when they failed to make the repair to the walls and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of repairs in the amount of **\$35.00**.

Keys and Laundry card

I accept the undisputed evidence of the landlord's agent that the tenant failed to return the keys and laundry card at the end of the tenancy. I find the tenant breached the Act, as they are required to return all keys to the landlord at the end of the tenancy and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the cost of replacing the keys and card in the amount of **\$50.00**.

Administrative fee and GST

I find the landlord is not entitled to claim administrative fees for breaching the fixed term agreement as this is covered in the liquidated damages clause. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$602.50** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of \$342.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$260.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: August 30, 2016

Residential Tenancy Branch