



# 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:

OPB, MNSD, MNDC, FF

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. As the rental unit is vacant, I find there is no need to consider the Landlord's application for an Order of Possession.

The Agent for the Landlord stated that on March 04, 2016 the Application for Dispute Resolution, the Notice of Hearing and a copy of the tenancy agreement were sent to each Tenant at the service address on the Application, via registered mail. The Agent for the Landlord cited three tracking numbers that corroborates this statement. During the hearing the Agent for the Landlord checked the Canada Post website and told me that the male Tenant had signed for one of the aforementioned packages and an unknown person signed for the other two packages. 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 none of the Tenants appeared at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for lost revenue/unpaid rent and to keep all or part of the security deposit?

### Background and Evidence

The Agent for the Landlord stated that:

- the three Tenants signed the tenancy agreement that was submitted in evidence;
- the tenancy agreement declares that the tenancy will begin on March 01, 2016;
- the tenancy is for a fixed term that ends on February 28, 2017;

- the tenancy agreement declares that the rent of \$1,250.00 is due by the first day of each month
- a security deposit of \$299.00 was paid;
- on February 29, 2016 the male Tenant informed the Landlord that his rent money had been stolen and that the Tenants would not be moving into the rental unit;
- the Tenants never moved into the rental unit;
- the rental unit was advertised on social media and two websites in early March of 2016; and
- the rental unit was re-rented for June 01, 2016.

The Landlord is seeking unpaid rent/lost revenue from March, April, and May of 2016, in the amount of \$3,750.00. This is less than the amount originally claimed, as the Landlord was able to find new tenants for June of 2016.

The Landlord is seeking liquidated damages of \$1,250.00, which is a term outlined in the tenancy agreement submitted in evidence.

### Analysis

The *Act* defines a “tenancy agreement” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit. Based on the undisputed evidence I find that these parties entered into a fixed term tenancy agreement that was to begin on March 01, 2016 and continue until at least February 28, 2017, for which the Tenants were to pay monthly rent of \$1,250.00.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*. There is no evidence that the Landlord gave the Tenants notice to end this tenancy.

Section 45(2) of the *Act* authorizes a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. I find that the Tenants did not have the right to give notice to end this tenancy prior to February 28, 2017, pursuant to section 45(2) of the *Act*.

As neither party gave proper written notice to end this tenancy, I find that the tenancy did not end pursuant to section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. I find that the tenancy agreement provides that the Tenants will vacate the rental unit at the end of the fixed term, which is

February 28, 2017. As the Tenants did not move into the rental unit, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. On the basis of the undisputed evidence I find that this tenancy ended on, or about, February 29, 2016 when the male Tenant told the Landlord the Tenants were not moving into the rental unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 44(1)(f) of the *Act*.

Section 67 of the *Act* authorizes me to order a tenant to pay compensation to a landlord if the landlord suffers a loss as a result of the tenant failing to comply with the *Act*. On the basis of the undisputed evidence I find that, in spite of reasonable efforts to find a new tenant, the Landlord experienced several months of lost revenue as a result of the Tenant ending the tenancy before the end of the fixed term of the tenancy.

I therefore find that the Tenants are obligated to pay \$3,750.00 to the Landlord in compensation for the revenue the Landlord lost, which would not have been lost if the tenancy had not ended.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure stipulates that a claim in "limited to what is stated in the application". As the Landlord has made no reference to a claim for liquidated damages in the Application for Dispute Resolution, I am unable to consider the Landlord's claim for liquidated damages.

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

### Conclusion

The Landlord has established a monetary claim, in the amount of \$3,850.00, which includes \$3,750.00 in lost revenue and \$100.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$299.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$3,551.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants, 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: October 21, 2016

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Residential Tenancy Branch

