



# Dispute Resolution Services

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      MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for damage to the unit - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started in July 2014 however a new tenancy agreement was signed on July 8, 2015 for a fixed term to end July 31, 2016. The Tenant signed a fixed term agreement for each of the 4 years that the Tenant resided at the building. The Tenant gave written notice on April 26, 2016 to end the tenancy sometime in early May 2016. Rent of \$1,127.50 was payable on the first day of each month. At the outset of the

tenancy the Landlord collected \$550.00 as a security deposit. The tenancy agreement provides for a late or NSF fee of \$25.00 plus any bank fee charged by the bank. The tenancy agreement provides that if the tenant ends the tenancy before the end date the Tenant will pay the Landlord liquidated damages of \$1,127.00. The Landlord states that this liquidated damages amount is an error and should read \$563.75. The Parties mutually conducted a move-in inspection and completed a condition report. The Landlord states that the Tenant was given at least two opportunities to complete a move-out inspection but failed to attend. The Tenant states that by the time the inspections were offered the Tenant was out of town and was not going to return for the inspection. The Tenant confirms that an inspection was offered on May 11, 2016 and that the Tenant told the Landlord to conduct the inspection herself.

The Landlord states that the rent cheque for May 2016 was returned NSF and that the Tenant failed to pay rent for May 2016. The Landlord claims \$1,027.50 as unpaid rent and \$75.00 as a late and NSF fee. The Tenant states that he moved out of the unit at the end of April 2016 and confirms that he did not inform the Landlord until May 11, 2016 that he had vacated the unit.

The Landlord states that the unit was advertised mid May 2016 for rent of \$1,100.00 and was not rented out until November 2016. The Landlord states that the vacancy rate is at 25%. The Landlord states that ads run almost continually for rentals. The Tenant states that while he saw the rental for his 2 bedroom unit online, the ad included photos of a one bedroom unit that were not flattering and because of which it would not be rented as readily. The Landlord claims liquidated damages of \$563.75 and lost rental income for June and July 2016.

The Tenant states that he was not aware of the liquidated damages clause and that he should not have to pay for lost rental income as he tried to negotiate a settlement but the Landlord refused. The Landlord states that tenants are normally allowed to end a fixed term tenancy on the payment of the liquidated damages amount. The Tenant states that this was not offered to the Tenant.

The Landlord states that the Tenant left the carpet unclean and claims \$175.00. The Landlord states that the Tenant left the unit damaged and claims \$50.00 for repairs. No invoice was provided for either claimed amount. The Landlord claims g.s.t. of \$17.75. No invoice showing this charge was provided. The Landlord states that their hourly paid employees did not work for the costs being claimed.

The Landlord claims an admin fee of \$50.00. The tenancy agreement provides that a \$25.00 admin fee is payable by the Tenant if any deductions are required from the security deposit.

### Analysis

Section 23 of the Act provides that the right of a tenant to return of the security deposit is extinguished if the tenant fails to attend any move-out inspection offered. Based on the Tenant's evidence of not intending to return to any inspection I find that the Tenant's right to return of the security deposit was extinguished at move-out. The Landlord is therefore entitled to retain the security deposit of **\$550.00** plus zero interest. This amount will be set off any entitlement of the Landlord.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that a claiming party must do whatever is reasonable to minimize the damage or loss claimed. Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

As the Landlord was not informed that the Tenant was out of the unit prior to May 11, 2016 and as the keys were not in the Landlord's possession until May 11, 2016 I find that the Landlord has substantiated rent for May 2016. As the Landlord advertised the

unit shortly thereafter I find that the Landlord acted to mitigate its losses as soon as possible. I find that the Landlord is therefore entitled to rent for May 2016 of **\$1,127.50**. As the tenancy agreement only provides for a \$25.00 NSF fee and as there is no evidence that the Tenant issued other NSF cheques I find that the Landlord has not substantiated the costs of \$75.00 claimed and I dismiss this claim.

The Landlord has claimed lost rental income for June and July 2016 and liquidated damages for the same breach: ending the fixed term early. As a landlord may not be compensated more than once for the same breach, and in order to resolve the conflict of competing compensation amounts for the same breach I resolve the conflict in favor of the Tenant and find that the Landlord is only entitled to the lesser amount of **\$563.75** as liquidated damages. I dismiss the claims lost rental income.

As the hourly paid employees did the work to clean and repair the unit and as there are no invoices showing a separate or any cost to the Landlord for the cleaning and repair I find that the Landlord has not substantiated the costs claimed for the cleaning and repairs and I dismiss these claims. As there is not invoice indicating any GST being paid for anything I dismiss this claim.

As the Act does not allow the Landlord to arbitrarily make any deductions from the security deposit I dismiss the admin fee claimed for making deductions.

As the Landlord has had some success with its claims I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,791.25** ( $563.75 + 1,127.50 + 100.00$ ). Deducting the security deposit plus zero interest of \$550.00 leaves **\$1,241.25** owed by the Tenant to the Landlord.

### Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,241.25**. If necessary, this order may be filed in the 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: December 23, 2016

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Residential Tenancy Branch