



# 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:** MNSD, FF

### **Introduction**

This hearing was convened in response to an application by the landlord for dispute resolution pursuant to the *Residential Tenancy Act* (the Act). The landlord filed on February 02, 2017 for an Order to retain the tenant's security deposit and recovery of the filing fee. The landlord clarified their application is primarily in respect for the reason the tenant did not participate in the *move out* inspection on either occasion of 2 opportunities offered the tenant as per Section 35(2) of the Act.

Both tenants attended the hearing as did a representative for the landlord and both given opportunity to present relevant evidence and make relevant submissions. The tenant acknowledged receiving the evidence of the landlord comprised of 19 pages. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were provided opportunity to mutually resolve their dispute to no avail.

### **Issue(s) to be Decided**

Is the tenant's right to the return of the security deposit extinguished?  
Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The undisputed evidence is as follows. The tenancy began February 01, 2016 and was guided by a written tenancy agreement. At the outset of the tenancy the landlord collected a security deposit in the sum amount of \$475.00 which they retain in trust. The parties agreed the tenancy ended January 31, 2017 when the tenant vacated. The parties agreed they mutually conducted a *move in* inspection at the outset of the tenancy.

The evidence in dispute follows. The landlord testified they provided the tenant a

notice on January 18, 2017 requesting they contact the landlord to arrange a move out inspection date and time between 9 a.m. and 5 p.m. at the end of the month. The tenant testified they indeed received a notice; however they claim it stated an inspection was scheduled for January 18, 2017 between 9 a.m. and 5 p.m., which they thought premature given they were not vacating for almost 2 weeks. The tenant did not elaborate on their response to the landlord's Notice. I have not been provided a copy of the parties' referenced notice issued in January 2017 (January 18 notice). Regardless, the landlord relies on the *January 18 notice* as the tenant's first opportunity to schedule the move out condition inspection date and time.

The landlord testified they subsequently placed a Final Notice for Inspection in the approved form on the tenant's door on January 30, 2017 stating an inspection would be conducted on January 31, 2017 between 1p.m. and 5 p.m. However, the landlord claims the tenant was not present at the rental unit when the landlord performed the inspection at 1:10 p.m. on January 31, 2017 on their own. The tenant testified they indeed received the notice and repeatedly called the landlord and also attended at their office on January 31, 2017 to more narrowly define the inspection time without success. They testified not being consulted in respect to the stated 4 hours range of time and that their employment could not accommodate the landlord's range. The tenant testified they came to know at the end of the day the inspection had occurred in their absence. I have not been provided a copy of the referenced Final Notice for inspection.

The landlord testified the rental unit was left requiring a "small amount of cleaning". The landlord's application states the tenant owed a \$25.00 late payment fee for January 2017 rent. The landlord's evidence indicates their condition inspection report states \$35.00 for cleaning and \$25.00 for an *unpaid late fee*.

### **Analysis**

The parties may access resources and a copy of referenced legislation at [\*\*www.bc.ca/landlordtenant\*\*](http://www.bc.ca/landlordtenant).

I have reviewed the submissions of the parties. On the preponderance of the evidence and on balance of probabilities I find as follows.

**Section 35(2)** of the Act states that a landlord must offer the tenant with at least 2 opportunities for a condition inspection. In addition the following Residential Tenancy Act Regulation 16 and 17 must be noted in respect to what is prescribed as requirement for the 2 opportunities for a condition inspection.

- *a landlord's first opportunity proposal to the tenant and tenant's alternative, and*

- a landlord's second opportunity proposal, different from the first, on a notice in the approved form (*Final Notice for inspection*).

### **Scheduling of the inspection**

- 16** (1) The landlord and tenant must attempt in good faith to mutually agree on a date and time for a condition inspection.
- (2) A condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time.

### **Two opportunities for inspection**

- 17** (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
- (2) If the tenant is not available at a time offered under subsection (1),
- (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
  - (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.
- (3) When providing each other with an opportunity to schedule a condition inspection, the landlord and tenant must consider any reasonable time limitations of the other party that are known and that affect that party's availability to attend the inspection.

I find that the tenant's testimony in respect to the Final Notice as their efforts to make the inspection time more specific than the landlord's 4 hour range. I find the Regulations do not state that the landlord's second opportunity, or final notice, must be an attempt in good faith to mutually agree on a date and time or consider reasonable time limitations of the other party that affect that party's availability to attend. None the less, this is not to say that the landlord should avoid being more specific in respect to their final inspection time in the interest of encouraging compliance or certainty.

In this matter I find that the landlord has the burden to prove they met the 2 part requirement imposed by Regulation. The tenant's testimony disputes the landlord's *January 18 notice* as being valid notice of an opportunity to schedule an inspection. In the absence of a copy of the landlord's *January 18 notice*, it is not clear as to what the landlord proposed in their notice. In the absence of the same notice and absence of the Final Notice it is not discernible if the landlord's second opportunity proposal meets the test of being different from the first opportunity proposal. I find the landlord has not provided sufficient evidence proving they met the requirements established by the Act and Regulation respecting the scheduling of the move out inspection. I find the landlord has not proven they complied with Section 35(2) of the Act and therefore pursuant to

**Section 36(2)** of the Act I find the landlord's right to claim against the security deposit was extinguished. As a result, I must dismiss the landlord's application.

Residential Tenancy Policy Guideline #17, in relevant part, states as follows:

**RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION**

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested retention of the security deposit. Because the claim has been dismissed in its entirety it is appropriate that I Order the return of the security deposit to the tenant.

**I grant** the tenant a Monetary Order in the amount of **\$475.00**. If necessary, this Order may be registered in the Small Claims Court and enforced as an Order of that court.

**Conclusion**

The landlord's application is dismissed. The tenant's security deposit is Ordered returned.

**This Decision is final and binding on both parties.**

*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: March 06, 2017

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Residential Tenancy Branch