



# 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 LTD PARTNERSHIP) and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNR, MND, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent, TC ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing.

The landlord testified that the tenants were each served separately with a copy of the landlord's application for dispute resolution and notice of hearing on August 31, 2017, and written evidence packages on September 1, 2017 and November 6, 2017, all by way of registered mail to the tenants' forwarding address provided in an email to the landlord on August 22, 2017. The landlord provided copies of the email with the forwarding address as well as all six Canada Post receipts and tracking numbers. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application and notice of hearing on September 5, 2017, and the landlord's written evidence packages on September 6, 2017 and November 11, 2017, five days after each of their registered mailings.

At the outset of the hearing, the landlord confirmed that the tenants had vacated the rental unit and an order of possession for cause was no longer required. Accordingly, this portion of the landlord's application is dismissed without leave to reapply.

### Issues to be Decided

Is the landlord entitled to a monetary award unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on March 1, 2017 and ended on August 16, 2017. Monthly rent in the amount of \$1,100.00 was payable on the first day of each month. A security deposit of \$399.00 was paid by the tenants and the landlord continues to retain this deposit. Both parties signed a written tenancy agreement for a fixed term from March 1, 2017 to February 28, 2018. A copy of the agreement was provided for this hearing.

The landlord indicated that move-in and move-out condition inspections and reports were completed for this tenancy. The landlord provided a copy of both reports. The landlord said that the tenants were given two opportunities to complete a move-out condition inspection but they failed to attend so the landlord conducted it in their absence. The landlord provided a copy of a "Notice of Final Opportunity to Schedule a Condition Inspection" for August 22, 2017, to the tenants.

The landlord stated that no written permission was given by the tenants to keep any part of their security deposit and an application to retain it was made by the landlord on August 23, 2017.

The landlord seeks a loss of rent of \$1,100.00 for August 2017. The landlord claimed that the unit was re-rented to a new tenant on November 22, 2017. The landlord also seeks a \$50.00 NSF fee and a \$25.00 late fee for the tenants failing to pay rent in August 2017. The landlord seeks a \$25.00 administration fee and a \$41.75 GST tax for the landlord's accounting department to deal with the tenants' security deposit. The landlord further seeks \$390.00 for cleaning, \$70.00 for garbage removal and \$350.00 for repairs after the tenants vacated the rental unit. The landlord provided photographs to support its claims. The landlord also claims for liquidated damages of \$625.00 and to recover the \$100.00 filing fee paid for this application.

### Analysis

#### Unpaid Rent

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case is the first day of each month.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the undisputed evidence presented, I find that the tenants vacated the rental unit on August 16, 2017. They did not pay any rent to the landlord while residing in the rental unit during August 2017. I accept the landlord's testimony that she was unable to re-rent the unit during this time period, even after the tenants vacated on August 16, 2017. Therefore, I find that the landlord is entitled to \$1,100.00 in rent for the entire month of August 2017.

#### Late Fee and NSF Fee

I award the landlord \$25.00 for the August 2017 late fee. I find that the tenants did not pay rent for the above month. The landlord provided for this \$25.00 monthly fee in

clause 10 of the parties' written tenancy agreement, as required by sections 7(1)(d) and (2) of the *Regulation*.

I dismiss the landlord's claim without leave to reapply for an NSF fee of \$50.00 for August 2017. Despite the \$25.00 (not \$50.00) NSF fee being enumerated in the parties' written tenancy agreement, I find that the landlord failed part 3 of the above test by not providing bank statements indicating what NSF fee was actually charged to the landlord, if any, for August 2017.

#### Other Administrative Fees

I dismiss the landlord's claims for an administration fee of \$25.00 and a GST tax of \$41.75, without leave to reapply. The landlord claimed that these were charges placed by the accounting department of the landlord company in order to administer the security deposit. I find that these are charges that are part of doing business as a landlord. I find that the landlord failed to justify why the tenants should be incurring these costs for the landlord to fulfill its obligation under the *Act* in dealing with the tenants' security deposit.

#### Liquidated Damages

Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times. In this case, the landlord did not provide copies of any advertisements posted to re-rent the unit. She said that costs were paid for the advertisements but did not supply any receipts. The landlord did not know how many inquiries were answered for the unit or how many showings of the unit were done.

Although the tenants vacated the rental unit prior to the end of their fixed term on February 28, 2018, I find that the landlord did not show how the \$625.00 claimed for liquidated damages in clause 5 of the tenancy agreement was a genuine pre-estimate

of the loss. For the above reasons, I dismiss the landlord's claim of \$625.00 for liquidated damages without leave to reapply.

Other Damages and Cleaning

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's claim for \$390.00 for general cleaning of the rental unit, \$70.00 for garbage removal, and \$350.00 for repairs, without leave to reapply. I find that the landlord failed part 3 of the above test by not providing proper invoices and receipts for the work done. The landlord supplied one unsigned invoice that had limited information as well as a move-out statement similar to a tenant rent ledger where deductions were made by the landlord for the various repairs.

The landlord explained that all of the work was completed in-house with the landlord. The landlord's invoice referred to the work being done as "reno labour" and "reno materials." The landlord indicated another short description of some work done and the rate per hour. However, the landlord did not provide a breakdown of the number of workers employed for each task on the invoice or the move-out statement.

As the landlord was mainly unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$399.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$399.00 in partial satisfaction of the monetary award.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$399.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$726.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the landlord's application is dismissed without leave to reapply.

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 15, 2018

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Residential Tenancy Branch