



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 OPC MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for an order of possession on an undisputed 1 Month Notice to End Tenancy for Cause ("1 Month Notice") for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain all or part of the tenant's security deposit and pet damage deposit, and to recover the cost of the filing fee.

Two agents for the landlord ("agents") attended the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the teleconference hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application, and documentary evidence were considered. The agents testified that the Notice of Hearing, application and documentary evidence were served on the tenant on September 15, 2017 to the new mailing address provided verbally by the tenant. A registered mail tracking number was provided by the landlord which has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the tenant signed for and accepted the registered mail package on September 21, 2017. Based on the above, I find the tenant was served as of September 21, 2017, which is the date the tenant signed for and accepted the registered mail package. As a result, the hearing continued without the tenant.

Preliminary and Procedural Matters

At the outset of the hearing, the agents confirmed that the tenant vacated the rental unit on August 31, 2017 which was the effective vacancy date listed on the undisputed 1 Month Notice. As a result, I have not considered the landlord's request for an order of possession which I find is now moot as the landlord has already received possession of the rental unit back from the tenant.

The agents provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The agents confirmed their understanding that the decision would be emailed to them and that they would receive any applicable orders by email. The tenant will be sent the decision by regular mail as an email address was not available.

Regarding the landlords' digital evidence, it was excluded in full as none of the digital files would open during the hearing.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen with the tenant's security deposit and pet damage deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the written tenancy agreement in evidence. A fixed term tenancy began on May 1, 2017 and was scheduled to end on April 30, 2018. The landlord testified that monthly rent of \$950.00 per month and was due on the first day of each month. The landlord stated that the tenant paid a security deposit of \$467.50 and a pet damage deposit of \$467.50 at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim for \$1,183.75 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Cleaning	\$365.00
2. Repairs	\$285.00
3. Liquidated damages	\$475.00
4. Admin Fee	\$25.00
5. GST	\$33.75
TOTAL	\$1,183.75

Regarding item 1, the landlord has claimed \$365.00 for cleaning costs for the rental unit due to what the agents claim included dirty carpets and an overall dirty unit. The agents included a copy of the condition inspection report which indicates the rental unit was left dirty at the end of the tenancy. The invoice submitted in evidence in support of this item includes steam carpet cleaning and a full suite clean according to the agents. The agents described that the stove had to be scraped clean, the fridge required cleaning, the walls required washing and the bathroom was dirty also. In addition, the agents stated that the tenant failed to return the rental unit keys at the end of the tenancy.

Regarding item 2, the landlord has claimed \$285.00 for damage to a bi-fold closet door, holes in walls and general wear and tear that exceeded reasonable wear and tear in the opinion of the agents. The agents stated that several holes in the drywall had to be repaired and an invoice was submitted in support of this portion of the landlord's claim.

Regarding item 3, the landlord has claimed \$475.00 for the cost of liquidated damages as per clause 5 of the tenancy agreement which the tenant signed at the start of the tenancy and was submitted in evidence. The agents stated that the tenant failed to comply with the tenancy agreement by ending the tenancy by being evicted early for cause and therefore breaching a fixed term tenancy under the *Act*.

Regarding item 4, the landlord has claimed a \$25.00 "admin fee" for what the agents stated was due to the landlord having to claim against the tenant's security deposit and pet damage deposit.

Regarding item 5, the landlord has claimed \$33.75 for GST of 5% for items 1, 2 and 4 listed above.

Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agents, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, Application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant.

Item 1 - The landlord has claimed \$365.00 for cleaning costs for the rental unit due to what the agents claim included dirty carpets and an overall dirty unit. Based on the agents' undisputed testimony, condition inspection report, and the invoice submitted in evidence, I find the tenant breached section 37 of the *Act* which requires that the tenant leave the rental unit in reasonably clean condition at the end of the tenancy, less reasonable wear and tear. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$365.00** for cleaning costs as claimed.

Item 2 - The landlord has claimed \$285.00 for damage to a bi-fold closet door, holes in walls and general wear and tear that exceeded reasonable wear and tear in the opinion of the agents. I have reviewed the condition inspection report and find that the evidence submitted, including the invoice supports the landlord's claim. I also find that the tenant caused damage to the rental unit that exceeded reasonable wear and tear. Therefore, I find the landlord has met the burden of proof and I grant the landlord **\$285.00** for damages as claimed.

Item 3 - The landlord has claimed \$475.00 for the cost of liquidated damages as per clause 5 of the tenancy agreement which the tenant signed at the start of the tenancy and was submitted in evidence. The agents stated that the tenant failed to comply with the tenancy agreement by ending the tenancy by being evicted early for cause and therefore breaching a fixed term tenancy under the *Act*. Having reviewed clause 5 of the tenancy agreement and having accepted that the tenancy ended before the fixed term was scheduled to expire based on an undisputed 1 Month Notice, I find the tenant breached section 45(2) of the *Act* which states:

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, that rent is payable under the tenancy agreement.

[My emphasis added]

I find the earliest the tenant could have ended the tenancy was April 30, 2018 and as a result, I find the landlord has met the burden of proof that the landlord is entitled to liquidated damages, which is a genuine pre-determination of the cost of re-renting the rental unit which the parties agreed to in writing at the start of the tenancy. Therefore, I grant the landlord **\$475.00** as claimed for item 3.

Item 4 - The landlord has claimed a \$25.00 "admin fee" for what the agents stated was due to the landlord having to claim against the tenant's security deposit and pet damage deposit. Section 7(1) of the *Residential Tenancy Regulation* ("Regulation") states:

Non-refundable fees charged by landlord

- 7** (1) A landlord may charge any of the following non-refundable fees:
- (a) direct cost of replacing keys or other access devices;
 - (b) direct cost of additional keys or other access devices requested by the tenant;
 - (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
 - (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
 - (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
 - (f) a move-in or move-out fee charged by a strata corporation to the landlord;
 - (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.
- (2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

[My emphasis added]

Given the above, I find the landlord had no authority under the *Act* to include such a fee in their tenancy agreement as this type of admin fee is not authorized under the *Act*. Therefore, I find the landlord has not met the burden of proof and **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply. I find there is no authority under the *Act* for and admin fee when applying against a tenant's security deposit and/or pet damage deposit. In fact, I find that it was solely the landlord's decision to apply and that they are not entitled to an extra charge for doing so as claimed.

Item 5 - The landlord has claimed \$33.75 for GST of 5% for items 1, 2 and 4 listed above. I have carefully reviewed the invoices for items 1 and 2 and I do not see GST was added to either invoice. In addition, there is no authority under the *Act* to add GST to a liquidated damages clause which is what the landlord has attempted to do in the matter before me. Therefore, I find the landlord has not met the burden of proof for item 5. Therefore, **I dismiss** this portion of the landlord's claim due to insufficient evidence, without leave to reapply. **I caution** the landlord from attempting to charge GST on liquidated damages in the future.

Given that the landlord's claim was partially successful, I grant the landlord the recovery of the cost of the filing fee pursuant to section 72 of the *Act* in the amount of **\$100.00**.

I find the landlord has established as total monetary claim of **\$1,225.00** as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
1. Cleaning	\$365.00
2. Repairs	\$285.00
3. Liquidated damages	\$475.00
4. Admin Fee	Dismissed
5. GST	Dismissed
6. Filing fee	\$100.00
TOTAL	\$1,225.00

In reaching this finding I have considered the photo evidence, condition inspection report, invoices, tenancy agreement and testimony provided.

The landlord continues to hold a security deposit of \$467.50 and a pet damage deposit of \$467.50 for a total in combined deposits in the amount of \$935.00 which have

accrued \$0.00 in interest since the start of the tenancy. I authorize the landlord to retain the tenant's full combined deposits which total \$935.00 pursuant to section 72 of the *Act* in partial satisfaction of the landlord's monetary claim. Based on the above, I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenant to the landlord in the amount of **\$290.00**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim of \$1,225.00 as described above. The landlord has been authorized to retain the tenant's combined deposits of \$935.00 pursuant to section 72 of the *Act* in partial satisfaction of the landlord's monetary claim. In addition, the landlord is granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenant to the landlord in the amount of **\$290.00**. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 9, 2018

Residential Tenancy Branch