



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NPR LTD. PARTNERSHIP DBA NORTHVIEW APT REIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, I explored service of the hearing documents and evidence upon each other and the Residential Tenancy Branch.

I heard the landlord sent its Application for Dispute Resolution and evidence submitted at the time of filing to the tenants via registered mail using the forwarding address provided at the previous dispute resolution proceeding (file number referred to on the cover page of this decision). The tenants confirmed receipt of this package.

The landlord's agent testified that the landlord's sent additional evidence to the tenants via registered mail on March 23, 2018. The tenants stated they did not receive another package from the landlord. The landlord was given time to obtain the registered mail receipt or tracking number but was unable to do so before the hearing time expired. I noted that the landlord did not submit their additional evidence to the Residential Tenancy Branch until June 8, 2018, only four days before the hearing. The party serving documentation has the burden to prove service occurred. I was not satisfied the landlord served the tenants with the additional evidence package and I did not admit the landlord's evidence package submitted June 8, 2018 or consider it in making this decision.

The tenants provided a written response and served it upon the landlord on June 6, 2018. The landlord confirmed receipt of the tenants' response and I admitted it into evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on September 1, 2012 and the tenants paid a security deposit of \$625.00. The parties had executed multiple tenancy agreements with the most recent tenancy agreement containing a vacate clause requiring the tenants to vacate by July 31, 2017. The tenants were required to pay monthly rent of \$995.00 after applying a rent incentive on the first day of every month. Each co-tenant had been paying one-half of the rent to the landlord. For the month of July 2017 the landlord received one-half of the monthly rent from the tenant JF but the pre-authorized payment for tenant HT was reversed.

On July 31, 2017 the landlord took possession of the rental unit even though the tenants had not given up possession of the rental unit and the rental unit had many of their belongings in the unit, as seen in the decision issued on November 1, 2017 following a dispute resolution proceeding that took place on October 26, 2017 (file number referred to on the cover page of this decision). In that decision, the Arbitrator concluded the tenants had not abandoned the rental unit as alleged by the landlord and the landlord violated the Act by taking possession of the rental unit and barring the tenants from accessing the rental unit without a court order. The landlord took possession of the unit by changing the locks on the rental unit and not giving the tenants the keys to the new locks. In the decision of November 1, 2017 it was also recorded that the parties agreed to meet at the rental unit on October 30, 2017 between 1:00 p.m. and 2:00 p.m. in order for the tenants to retrieve their personal possessions. The Arbitrator also gave the tenants leave to reapply should there be a dispute concerning the retrieval of their personal property.

The landlord prepared a move-in inspection report with the tenants; however, the move-out inspection report was not prepared with the tenants. According to the landlord the move-out inspection was scheduled for 1:30 p.m. on July 31, 2017 as seen on a Notice

of Final Opportunity to Schedule a Condition Inspection but the tenants were not there. The landlord's agent did not proceed to complete the move-out inspection on July 31, 2017 but returned to the unit on August 1, 2017 to complete the report. According to the tenants no one appeared to do the move-out inspection report. Rather, the manager came and changed the locks to the unit and locked them out. Nor, did the landlord approach them about performing an inspection together on August 1, 2017.

Below, I have summarized the landlord's claims against the tenants and the tenants' responses.

### **Unpaid rent**

The landlord seeks to recover unpaid rent of \$497.50 for unpaid rent for July 2017 plus a returned cheque charge of \$50.00. The landlord pointed me to a clause 45 in the tenancy agreement that provides

45. OTHER

NSF Charges are charged back at current bank rates.  
Late Fee charged out at \$25.00/month.  
Replacement Key \$25.00 each.

The landlord did not provide a copy of the landlord's bank notices or statements to demonstrate the landlord's bank charges it \$50.00 for NSF cheques. I also pointed out to the landlord that in order to charge an administration fee for NSF cheques the amount of the fee must be stipulated in the tenancy agreement, which it is not in this case. Therefore, I find the claim for an NSF charge was not sufficiently supported and I did not consider it further.

I did consider that the landlord would be entitled to a late payment fee of \$25.00 since this fee is specified in the tenancy agreement and it appears to comply with section 7 of the Regulations.

The tenant HT conceded that his July 2017 rent payment was reversed for some reason and that he owes for July 2017 rent and would pay the late fee.

### **Carpet cleaning**

The landlord withdrew this claim during the hearing.

## **Garbage disposal**

The landlord submitted that the tenants left abandoned possessions behind in the rental unit and they were taken to the dump by two men, over eight hours each, at \$20.00 per hour for a claim of \$320.00. The landlord confirmed that tenant HT came to the property on October 30, 2017 as agreed upon during the last hearing but that items remained after he was given the one hour to remove their possessions.

The tenant was of the position that one hour was not sufficient to move all of the possessions, especially considering he had to remove the items from the rental unit, load them into the elevator and then unload the elevator before taking them to the vehicle. The tenant stated that he asked the landlord's agent if he could remove the possessions from the rental unit and put them in the hallway so that the rental unit could be cleared of their possessions more quickly but the landlord's agent would not permit the tenant to do so.

The tenants submitted that the landlord's photographs were taken before their possessions were removed on October 30, 2017 and that the landlord's claims for 16 hours to remove the few possessions left behind is excessive.

## **Cleaning**

The landlord submitted that after the tenants possessions were removed on October 30, 2018 the rental unit needed cleaning. The landlord seeks \$280.00 as this is the flat rate, as outlined in the "vacating letter"; regardless as to how much cleaning is required.

I asked the landlord to describe the opportunities the tenants had to clean the rental unit considering they were unlawfully locked out of the unit on July 31, 2017 and had only one hour to remove possessions on October 30, 2017. The landlord could not answer this question and I dismissed this claim without seeking a response from the tenants.

## **Locks/keys**

The landlord seeks \$125.00 to recover costs to change the locks on July 31, 2017. The landlord submitted that the tenants had changed the lock on the entry door and the tenant's lock was not aligned with the landlord's master key. The landlord pointed to clause 45 of the tenancy agreement where it provides that replacement keys will be charged at \$25.00 each. The landlord submitted that there were two building keys, two suite keys, and one mailbox key not returned.

The tenants submitted that the manager changed the locks to their unit even though they were still in possession of the rental unit on July 31, 2017. The tenants gave the manager the keys they had in their possession on July 31, 2017 and deny that five keys were not returned. The tenants stated they returned the keys to the rental unit because they wanted their lock back but the manager would not return their lock to them, alleging the tenants would change the lock again.

### **GST on labour**

The landlord seeks \$36.25 for GST payable on the landlord's labour supplied for garbage removal, cleaning and lock changing.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

### **Unpaid rent and late fee**

The tenant acknowledged responsibility to pay for rent and a late fee for July 2017 and I award the landlord \$497.50 plus \$25.00.

I make no award for an NSF fee because the tenancy agreement does not stipulate a specific amount for an administrative charge, as required in section 7 of the Regulations. Nor, did the landlord provide evidence to demonstrate its bank charges the landlord \$50.00 whenever a tenant's cheque is returned.

### **Carpet cleaning**

This claim was withdrawn by the landlord and I did not consider it further.

### **Garbage removal and cleaning**

I make no award to the landlord for garbage removal and cleaning considering the following:

- It was found by an Arbitrator on November 1, 2017 that the landlord unlawfully barred the tenants from accessing the rental unit on July 31, 2017 when the landlord changed the locks to the rental unit without a court order.
- The landlord's actions above deprived the tenants from the opportunity to remove their possession and clean the rental unit.
- I find one hour to remove possessions and clean the rental unit is a woefully small window of opportunity and it is not reasonable to expect the tenants could accomplish these tasks within one hour.
- The landlord did not provide the tenants with documentation to verify the amount claimed. The landlord had provided invoices in the documents uploaded on June 8, 2018 which I did not admit given the landlord could not prove these documents were served upon the tenants within the time limits required under the rules of Procedure, if at all.

In order to award the landlord compensation for garbage removal and cleaning, the losses that were suffered must be the result of the tenant's violation of the Act, regulations or tenancy agreement. In this case, I am of the view that it is the landlord's actions that contributed significantly to the landlord's losses by illegally barring the tenants from accessing the rental unit without a court order. Further, the landlord's did not satisfy me of the losses incurred since their evidence of losses was not sufficiently served. Therefore, I make no order for the tenants to compensate the landlord for the landlord's unlawful actions, even if they resulted in losses for the landlord, whatever they may be for garbage removal and cleaning.

### **Keys/locks**

The parties were in dispute as to how many keys were returned by the tenants. Presumably the landlord may have made a notation on this point on the move-out inspection report; however, the move-out inspection report was provided as part of the

evidence package that was excluded from consideration because it was not served upon the tenants. Also of consideration is that the landlords changed the locks unlawfully on July 31, 2017 and I find it unjust to make the tenants pay for the landlord's unlawful actions. Therefore, I make no award to the landlord for replacement keys and a lock change.

### **GST on labour**

As provided above, I have denied the landlord's claims that involve the landlord's labour. Accordingly, any GST payable on the labour costs shall be payable by the landlord.

### **Filing fee, Security Deposit and Monetary order**

The landlord had limited success in this application and I award the landlord recovery of \$25.00 of the filing fee paid for this application.

As for the security deposit, I decline to find the tenants extinguished their right to its return. I found the landlord's position inconsistent with respect to the Notice of Final Opportunity to Schedule a Condition Inspection, performing the inspection, and completing the inspection report on August 1, 2017. It is not clear to me that the landlord's agent performed a move-out inspection on July 31, 2017 at 1:30. The landlord acknowledged the report as not completed at the scheduled inspection time but that the landlord's agent came back on August 1, 2017 to complete the report; however, that was not scheduled with the tenants. What is clear is that the landlord's agent came and changed the locks to the rental unit on July 31, 2017 even though the tenants had not vacated or abandoned the rental unit. Accordingly, I find the landlord did not schedule and then complete the inspection report with the tenants when the unit was vacant in accordance with the Regulations. Therefore, it would appear that the landlord extinguished its right to make a claim against the security deposit, not the tenants.

Despite finding the landlord likely extinguished the right to make a claim against the security deposit, it is important to note that extinguishment only pertains to claims for damage and the landlord did not make a claim for damage. Rather, the landlord's claims pertain to unpaid rent, a late fee, and cleaning which a landlord may claim against a deposit even if the landlord has extinguished their right to make a claim against the deposit for damage.

In light of all of my findings above, I authorize the landlord to make the following deductions from the tenants' security deposit and the landlord is ordered to return the balance of the security deposit to the tenants, as calculated below:

Security deposit		\$625.00
Less authorized deductions for:		
Unpaid rent	\$497.50	
Late fee	25.00	
Filing fee (partial)	<u>25.00</u>	<u>\$547.50</u>
Balance of security deposit owed to tenants		\$ 77.50

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit & Set-off*, I provide the tenants with a Monetary Order in the amount of \$77.50 to serve and enforce upon the landlord if necessary.

### Conclusion

The landlord is authorized to deduct a total of \$547.50 from the tenants' security deposit and must return the balance of \$77.50 to the tenants without delay. The tenants are provided a Monetary Order in the amount of \$77.50 to serve and enforce upon the landlord if necessary.

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: June 29, 2018

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Residential Tenancy Branch