



# Dispute Resolution Services

Page: 1

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      MNRLS, MNDCLS, FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for a monetary order for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement, for unpaid rent or utilities, to retain the tenant's security deposit and to recover the cost of the filing fee.

An agent for the landlord ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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 tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing") application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail on November 17, 2017 and that the mail was addressed to the tenants. The registered mail tracking numbers have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website the registered mail packages were both signed for and accepted by the tenants with the package for tenant VS being signed for and accepted on December 4, 2017, and the package for tenant WD being signed for and accepted on November 24, 2017. I find the tenants were served as indicated above based on the testimony of the agent and the online registered mail tracking information including the tracking numbers. Therefore, the hearing continued without the tenants present and as such, I consider this application to be unopposed by the tenants.

Preliminary and Procedural Matter

The landlord confirmed their email address at the outset of the hearing. Accordingly, the decision will be emailed to the landlord and sent by regular mail to the tenants who did not attend the hearing to provide their email address.

Issues to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2017 and was not scheduled to end until January 31, 2018. The agent stated that the tenants vacated the rental unit on October 31, 2017. Monthly rent of \$755.00 plus \$10.00 parking per month was due on the first day of each month. The tenants paid a security deposit of \$377.50 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming a total of \$1,132.50 comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Liquidated damages	\$377.50
2. Loss of November 2017 rent	\$755.00
<b>TOTAL</b>	<b>\$1,132.50</b>

Regarding item 1, the agent referred to clause 5 of the tenancy agreement submitted in evidence which indicates that the parties initialed the liquidated damages amount of \$377.50 that was agreed to between the parties should the tenants end the fixed term tenancy early as a pre-determined cost to re-rent the rental unit.

Regarding item 2, the landlord has claimed \$755.00 for the loss of November 2017 rent due to the tenant vacating the rental unit on October 31, 2017. The agent stated that new tenants were found who began paying rent as of December 1, 2017 resulting in

only one month of rental loss of \$755.00 for the landlord. The landlord is also claiming the cost of the filing fee.

### Analysis

Based on the undisputed documentary evidence and undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As I have accepted that the tenants were 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 tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable. I also find that the tenants breached section 45(2) of the *Act* which applies and states:

#### **Tenant's Notice**

(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]

In the matter before me, the tenants breached section 45(2) of the *Act* by vacating before the tenancy was scheduled to expire. Therefore, I find the landlord has met the burden of proof in proving their entire claim of **\$1,132.50** as claimed.

As the landlord's claim was successful, I find the landlord is entitled to the recovery of the cost of the filing fee of **\$100.00** pursuant to section 72 of the *Act*, as their application was fully successful. Based on the above, I find the landlord has established a total monetary claim of **\$1,232.50** comprised of \$1,132.50 as claimed plus the \$100.00 recovery of the cost of the filing fee.

As the landlord continues to hold the tenants' \$377.50 security deposit and pursuant to sections 38 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security

deposit of \$377.50 which has accrued \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$855.00.**

I caution the tenants to comply with section 45 of the *Act* in the future.

### Conclusion

The landlord's application is fully successful.

The landlord has been authorized to retain the tenants' full security deposit of \$377.50 including \$0.00 in interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$855.00. The landlord must serve the tenants 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: July 3, 2018

---

Residential Tenancy Branch