

IN THE MATTER between **NPR Limited Partnership/Avery Parle**, Applicant, and
Avery Parle/NPR Limited Partnership, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act");

AND IN THE MATTER of a Hearing before, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises located within the **city of Yellowknife in the Northwest
Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP / AVERY PARLE

Applicants/Landlord/Tenant

- and -

AVERY PARLE / NPR LIMITED PARTNERSHIP

Respondents/Tenant/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the landlord NPR Limited Partnership must pay to the tenant Avery Parle the security deposit in the amount of \$657.94 (six hundred fifty-seven dollars ninety-four cents).

DATED at the City of Yellowknife in the Northwest Territories this 2nd day of March
2015.

Adelle Guigon
Deputy Rental Officer

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-and-

AVERY PARLE / NPR LIMITED PARTNERSHIP

Respondents/Tenant/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 18, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Metslal Mesgun, representing the landlord Avery Parle, tenant
<u>Date of Decision:</u>	February 18, 2015

REASONS FOR DECISION

An application to a rental officer made by NPR Limited Partnership as the landlord against Avery Parle as the tenant was filed by the Rental Office January 20, 2015, and assigned file number 10-14519. The landlord served a copy of the filed application on the tenant by email deemed received January 23, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

An application to a rental officer made by Avery Parle as the tenant against NPR Limited Partnership as the landlord was filed by the Rental Office January 21, 2015, and assigned file number 10-14522. The tenant served a copy of the filed application on the landlord by personal service January 22, 2015.

The applications were both made regarding a residential tenancy agreement between them for the rental premises known as #104, 1200 Gitzel Street, in Yellowknife, Northwest Territories.

The landlord alleged the tenant had terminated the tenancy agreement prior to the fixed-term end date and consequently was liable for one month's lost rent. The tenant alleged the landlord was improperly retaining the security deposit against a "lease break fee" and requested the return of the security deposit.

A hearing was scheduled for both files for February 18, 2015, in Yellowknife, Northwest Territories. Ms. Metslal Mesgun appeared representing the landlord. Mr. Avery Parle appeared as tenant.

The applications being made regarding the same tenancy and in relation to end of tenancy consequences were heard together.

The parties agreed that a fixed-term tenancy agreement was in place for the rental premises known as #104, 1200 Gitzel Street, in Yellowknife, Northwest Territories. The parties agreed the tenant provided written notice of intention to vacate the rental premises on December 31, 2014; the written notice was received by the landlord November 27, 2014.

Ms. Mesgun testified the landlord was not able to secure a new tenant for the rental premises to take occupancy until February 27, 2015. The landlord charged the tenant rent for January 2015 only (not February) in the amount of \$1,315, and acknowledged that amount was improperly identified on the move out statement and lease balance statement as “improper notice/lease break fee”. The landlord also charged a two-hour cleaning labour fee of \$80, an administration fee of \$12.00, and GST of \$0.60. The total amount of charges applied against the tenant was \$1,407.60. The landlord retained the security deposit of \$657.94 against those charges, reducing the amount claimed to \$749.66.

Mr. Parle testified that within a couple of months of occupying the rental premises several safety and security issues became evident: encounters with unruly, intoxicated, and violent tenants and guests of tenants; threats and harassment against Mr. Parle and his girlfriend; parties lasting days; used condoms, puke, and smashed bottles littering the property inside and out; disturbances throughout the night, waking the tenant; and a side door to the residential complex that would not lock properly. Local law enforcement agencies were contacted on several occasions; their advice was to contact the property management company. The maintenance/security hotline provided to the tenant by the landlord was called repeatedly and the tenants were told there was no security service for the building. The landlord’s inability to keep the residential complex secure and to effectively respond to complaints of disturbances and safety issues prompted the tenant – for his own and his girlfriend’s safety – to find alternate accommodation.

Mr. Parle further testified that at no time during the month of December 2014 did the landlord show his apartment to prospective tenants and as such they did not make reasonable efforts to mitigate their loss of rent.

Ms. Mesgun did not dispute Mr. Parle’s description of the safety and security issues at the residential complex. She acknowledged that they have been having difficulties finding and keeping reliable security services. The building security services are required by contract to conduct regular and frequent walk-throughs of the landlord’s residential complexes specifically to address safety and security issues such as those described by the tenant. The security services over the last several months have been less than perfect, and Ms. Mesgun acknowledged that the tenant should not be the one to suffer as a consequence. Changes have since been implemented to appropriately address the concerns raised.

Ms. Mesgun identified Mr. Parle as an ideal tenant and the landlord regretted losing him as one. When they received Mr. Parle's notice to vacate an offer was made to transfer him to another building. Mr. Parle appreciated the offer, but was unable to accept it as he had already made a commitment with another landlord for alternate accommodation.

Ms. Mesgun could not explain why the rental premises was not shown to prospective tenants during the month of December. She could retrieve a database report from her office which might offer some explanation, but she did not disbelieve Mr. Parle's testimony and accepted that the premises was not shown.

Tenancy agreement

The residential lease establishes a fixed-term tenancy agreement between the parties for the rental premises known as #104, 1200 Gitzel Street, in Yellowknife, Northwest Territories, starting May 1, 2014, and ending April 30, 2015. The parties did not dispute the validity of the tenancy agreement. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Safety, security, and disturbances

Section 30 of the Act sets out the landlord's obligation to comply with all health, safety and maintenance and occupancy standards required by law with respect to the residential complex. Section 40 of the Act sets out the landlord's obligation to install in the residential complex devices necessary to make rental premises reasonably secure from unauthorized entry. Section 44(1) of the Act requires a landlord to inquire into any complaint by a tenant of disturbances caused by other tenants or persons permitted in the residential complex by other tenants and to take appropriate action to resolve the matter.

By failing to properly secure the side door to the residential complex, failing to take appropriate action in response to the tenant's complaints of disturbances, and failing to ensure the residential complex is cleared of biohazards (i.e. used condoms, puke, broken glass) within a reasonable period of time the landlord has failed to comply with their obligations under the Act. I find termination of the tenancy agreement effective December 31, 2014, to be reasonable compensation under the circumstances.

Loss of future rent and mitigation of loss

Section 5(2) of the Act sets out the landlord's obligation to mitigate their loss of future rent by renting the premises again as soon as is practicable. The tenant notified the landlord in writing more than 30 days before the date they vacated the rental premises. The landlord did not show the rental premises to prospective tenants during the time before the tenant vacated the rental premises. The valid question has been raised as to how the renting of the rental premises to new tenants can reasonably be expected to occur without showing the rental premises to prospective tenants. I find the landlord has failed to make reasonable efforts to mitigate their loss of rent. Between this finding and effective termination of the tenancy agreement on December 31, 2014, the claim of rent for January 2015 is denied.

Cleaning charges

Aside from including the cleaning charge and consequential administration fee and GST in the move out statement and resident ledger, there were no submissions regarding the necessity for the claimed cleaning. The entry/exit inspection report was not submitted into evidence to substantiate the condition of the rental premises. The charges for cleaning, administration fee, and GST are denied.

Security deposit

The security deposit including interest totalling \$657.94 was retained by the landlord against charges which have now been denied. As such, an order will issue requiring the landlord to pay to the tenant the total security deposit in the amount of \$657.94.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Resident ledger dated January 20, 2015

Exhibit 2: Move out statement dated January 20, 2015

Exhibit 3: Residential lease signed April 15, 2014

Exhibit 4: Tenant's written complaint to the landlord dated September 16, 2014

Exhibit 5: Email from Avery Parle to Colin Cleveland dated January 21, 2015

Exhibit 6: Set of two photographs