



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONNI PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNDCL-S
 FFT MNDCT MNSD

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

The landlord company was represented at the hearing by an agent who gave affirmed testimony. One of the tenants also attended, gave affirmed testimony, and represented the other tenant. The parties were given the opportunity to question each other and give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for liquidated damages?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of rent?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The landlord's agent testified that he is a new property manager for the rental complex and the dealings with the tenants were completed primarily with a previous property manager.

The tenancy began on December 1, 2018 as a fixed term to expire on November 30, 2019, however the tenancy ended on May 31, 2019. Rent in the amount of \$1,950.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$975.00 as well as a pet damage deposit in the amount of \$975.00, both of which are still held in trust by the landlord. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenancy agreement contains a clause respecting liquidated damages, wherein the tenants agreed that if the tenants ended the tenancy earlier, or caused the landlord to end the tenancy earlier than the end of the fixed term, the tenants would pay to the landlord liquidated damages in the amount of \$800.00 as a pre-determined cost to re-rent the rental unit and not as a penalty.

A move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy on May 24, 2019, however copies have not been provided for this hearing.

The landlord's agent further testified that the tenants gave notice to end the tenancy effective at the end of May, 2019, and disputes that new tenants moved in earlier requiring the tenants to vacate on May 24, 2019. A copy of a tenancy agreement with new tenants has been provided as evidence for this hearing showing that a new tenancy began on June 1, 2019.

The landlord received the tenants' forwarding address in an email dated May 24, 2019, and both deposits were withheld due to the liquidated damages claim.

The tenant testified that the tenants vacated the rental unit on May 24/19 and new tenants were moving in on May 25, 2019. The tenant had been emailing with the property manager at the time, copies of which have been provided for this hearing, wherein the property manager asked if new tenants could take possession on May 25, 2019 and the tenants agreed.

The Move-out Condition Inspection Report was done on May 24 after all belongings were moved out and the rental unit cleaned. The elevator was booked; the property manager had the day off and arranged for another property manager to be there.

The tenants sent their forwarding address to the landlord by email on May 24, 2019 and then the tenant's husband hand-delivered a note containing the forwarding address to the building manager on May 25, 2019.

The landlord has not returned any portion of either of the deposits to the tenants, and the building manager said that as a result of breaking the fixed-term, both deposits are forfeited. After talking to someone at the Residential Tenancy Branch, the tenant told the property manager that the deposits are not forfeited. It took about a month or so for the property manager to get back to the tenant, but said that he agreed that under new rules, the landlord would only keep \$800.00 as liquidated damages, but nothing has been returned.

The tenants paid full rent for the month of May, 2019 and request a pro-rated amount of \$440.00 given that new tenants moved in on May 25, 2019.

Analysis

Firstly, it is clear that the parties agreed to liquidated damages amounting to \$800.00 if the tenants caused the tenancy to end earlier than the fixed term, which they did. I do not find that the amount is excessive, considering that the monthly rent is more than that, and the landlord is entitled to liquidated damages in that amount.

The *Residential Tenancy Act* specifies that a landlord must return a pet damage deposit and/or security deposit to the tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or must make an Application for Dispute Resolution claiming against the deposit(s) within that 15 day period. If the landlord fails to do either, the landlord must repay double the amount. Further, the *Act* states that a landlord may only claim a pet damage deposit for damages caused by a pet, and there is absolutely no indication of that or any other

damages. The landlord's agent testified that both deposits were withheld from the tenants due to the \$800.00 liquidated damages, yet the deposits were \$975.00 each.

The tenant testified that aside from emailing the forwarding address to the property manager on May 24, 2019, it was also served in person to the landlord's office on May 25, 2019, and the landlord's agent didn't dispute that, but has no personal knowledge of that. I accept and find that the forwarding address was provided to the landlord in writing on May 25, 2019. The landlord filed the Application for Dispute Resolution on June 13, 2019, which is within the 15 day period if I were to find that the tenancy ended on May 31, 2019. However, that is disputed by the tenant and the parties agree that the move-out condition inspection report was completed on May 24, 2019.

I have reviewed all of the evidentiary material, including a string of messages between the tenant and the previous property manager, and it is clear that the tenants were asked to vacate on May 24, 2019, and they agreed. It is not unusual for a landlord to allow new tenants to move in earlier than a tenancy agreement specifies as the start of a tenancy, and therefore, the tenancy agreement which commenced on June 1, 2019 is not entirely conclusive proof of the date new tenants actually moved in. In the circumstances, and considering the evidentiary material, I find that the landlord's agents asked the tenants to move out on May 24, 2019 and the tenancy ended on that date.

Having found that the tenancy ended May 24, 2019 and the landlord received the tenants' forwarding address in writing on May 25, 2019, I must also find that the landlord's application filed on June 13, 2019 is beyond 15 days as required by law, and the tenants are entitled to recovery of double the amount of the security deposit, or \$1,950.00..

Given that the landlord has not made any claim for damages caused by a pet, the landlord ought to have returned the pet damage deposit to the tenants. I find that the tenants have established a claim for double the amount of the pet damage deposit, or \$1,950.00.

I also find that the tenants have established a claim of \$440.00 for overpayment of rent.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

In summary, I find that the landlord has established liquidated damages totalling \$800.00, and the tenants have established claims of \$3,900.00 for double recovery of the deposits and \$440.00 for rental overpayment, for a total of \$4,340.00. I set off the

amounts, and I grant a monetary order in favour of the tenants for the difference of \$3,540.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,540.00.

This order is final and binding and may be enforced.

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: October 01, 2019

Residential Tenancy Branch