# Dispute Resolution Services

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 MNDL-S, MNDCL-S, FFL

Introduction

On December 14, 2020, the Landlord applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the "*Act*"), seeking to apply the security deposit and pet damage deposit towards these debts pursuant to Section 38 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

B.B. attended the hearing as an agent for the Landlord. M.L. attended later as a witness for the Landlord. The Tenant attended the hearing, and L.K. attended the hearing later as a witness for the Tenant.

At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, to please make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also advised that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

B.B. advised that the Notice of Hearing package was served to the Tenant by registered mail on December 18, 2020, and the Tenant confirmed that she received this package. Based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was sufficiently served the Landlord's Notice of Hearing package.

B.B. also advised that the Landlord's evidence was served to the Tenant by registered mail on April 1, 2021, and the Tenant confirmed that she received this package on or around April 2, 2021. As service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

The Tenant confirmed that she did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards these debts?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 1, 2019 as a fixed term tenancy of two years, ending on June 30, 2021. However, the tenancy ended early, when the Tenant gave up vacant possession of the rental unit on November 30, 2020. Rent was established at $2,400.00 per month and was due on the first day of each month. A security deposit of $1,200.00 and a pet damage deposit of $1,200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that a move-in inspection was conducted on June 29, 2019 and that a move-out inspection was conducted on November 30, 2020. However, the parties disagreed with whether a copy of the move-out inspection report was presented at the

time of the inspection. A copy of the move-in and move-out inspection report was submitted as documentary evidence by the Landlord.

B.B. advised that the move-out inspection was heated, and that the Tenant left in a hurry without signing the report.

Witness L.K. advised that she attended the move-out inspection and a move-out inspection form was never presented to be reviewed. The only form that was available was the Landlord's Move Out Charge form.

Witness M.L. advised that her standard practice is to take the move-out checklist form with her when conducting move-out inspections, and that the boxes indicating specific deficiencies in the rental unit were marked off on this form during the move-out inspection.

The Tenant also advised that she was never provided with a copy of the move-out inspection report after the tenancy ended, pursuant to the *Act*. Therefore, the Landlord has extinguished the right to claim against the deposits.

M.L. could not recall if she provided this to the Tenant; however, this is generally her standard practice.

All parties did agree that the Tenant provided her forwarding address in writing on the Move Out Charge form on November 30, 2020.

B.B. advised that the Landlord is seeking compensation in the amount of **$3,200.00** because the Tenant was offered an incentive of free parking for two years, valued at $50 per month, and one free month of rent. This was contingent on the Tenant agreeing to a 24-month fixed term tenancy agreement. He referenced the "Additional Terms B" document of the tenancy agreement to support this arrangement. He indicated that the Tenant did not pay the first months rent, which is equivalent of $2,400.00, and the parking for the 16 months that the Tenant occupied the rental unit totalled $800.00.

The Tenant advised that this form does not indicate that this amount would be owed back to the Landlord if the tenancy agreement was breached. She referenced Section 6(3) of the *Act* to support her position that this would not be enforceable. While she did not provide this as documentary evidence, she also referenced a past Decision of the Residential Tenancy Branch in which the Landlord was not awarded compensation under what she believes was the same fact pattern.

B.B. advised that the Landlord is seeking compensation in the amount of **$975.00** for the cost of drywall repair and repainting of the rental unit as the Tenant left substantial damage. He referenced pictures submitted to demonstrate the condition of the walls at the end of the tenancy. Amongst the damage, he stated that a coat hanger was installed and left, another item was mounted on the wall, there were markings on the walls, screw holes were left, and it appears as if damage was done by both a pet and by some sort of tool. He submitted an invoice to support the cost of the repairs and he stated that the rental unit was painted prior to the tenancy starting.

The Tenant advised that she did not have many submissions to refute the Landlord's claims, other than it is not her belief that the whole rental unit required being re-painted.

B.B. advised that the Landlord is seeking compensation in the amount of **$30.00** because the Tenant was provided with two key fobs at the start of the tenancy and she only returned one fob at the end of the tenancy. He stated that this amount represents the cost to re-program a new fob.

The Tenant did not have any submissions with respect to this claim.

B.B. advised that the Landlord is seeking compensation in the amount of **$240.00** for the cost of cleaning the rental unit as the Tenant did not return the rental unit in a re-rentable state at the end of the tenancy. He referenced pictures submitted to demonstrate the cleanliness of the rental unit at the end of the tenancy. He stated that the baseboards were dirty, the laundry machine was not cleaned, the oven was dirty, a quick sweep was required, and that the shower and sink were both filthy. He submitted an invoice to support the cost of the cleaning and he stated that the Tenant did not provide any proof that she cleaned the rental unit prior to vacating.

The Tenant did not have any submissions with respect to this claim.

B.B. advised that the Landlord is seeking compensation in the amount of **$157.50** for the cost of a flea inspection. He referenced the Pet Agreement which required that the Tenant pay for a flea inspection prior to vacating the rental unit; however, the Tenant did not have this done. He provided an invoice for the cost of this inspection.

The Tenant did not have any submissions with respect to this claim.

B.B. advised that the Landlord is seeking compensation in the amount of **$4,800.00** for the loss of rent for December 2020 and January 2021 as the Landlord was unable to

find a new tenant after the Tenant broke her fixed term tenancy early. After receiving the Tenant's notice to end the tenancy on October 16, 2020, steps were taken to immediately advertise the rental unit. He stated that there were approximately two to four weekly showings coordinated, but this particular time of year just prior to Christmas is the most difficult time to find new tenants. The Landlord offered increasing incentives in attempt to find a new tenant, and finally rented it for February 1, 2021 at a reduced amount of rent. He referenced documentary evidence submitted to support the Landlord's efforts in attempting to re-rent the unit.

The Tenant advised that the Landlord did not conduct any showings of the rental unit between the time she provided her notice to end the tenancy and when she gave up vacant possession of the rental unit.

B.B. stated that any showings of the rental unit were conducted after the Tenant vacated and once the rental unit was repaired and cleaned.

Finally, B.B. advised that the Landlord is seeking compensation in the amount of **$1,382.94** for the cost liquidated damages as the Tenant ended the fixed term tenancy early. He referenced the liquidated damages clause in the tenancy agreement and submitted documentary evidence to support the Landlord's costs to re-rent the unit.

The Tenant advised that the Landlord's documentary evidence does not total the amount that is being sought and it is not clear what the actual costs were.

Analysis

Upon consideration of the testimony before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 23 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together on the day the Tenant is entitled to possession of the rental unit or on another mutually agreed day.

Section 35 of the *Act* states that the Landlord and Tenant must inspect the condition of the rental unit together before a new tenant begins to occupy the rental unit, after the day the Tenant ceases to occupy the rental unit, or on another mutually agreed day. As

well, the Landlord must offer at least two opportunities for the Tenant to attend the move-out inspection report.

Section 21 of the *Residential Tenancy Regulations* (the "*Regulations*") outlines that the condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the Landlord or the Tenant have a preponderance of evidence to the contrary.

Sections 24(2) and 36(2) of the *Act* state that the right of the Landlord to claim against a security deposit for damage is extinguished if the Landlord does not complete the condition inspection reports in accordance with the *Act*.

While the parties provided contradictory testimony with respect to whether a move-out inspection report was present at the time of the move-out inspection, or whether this report was provided to the Tenant after the tenancy ended, I find it important to note that when reviewing the Rental Unit Condition Report submitted as documentary evidence by the Landlord, this form does not meet the requirements of Section 20 of the *Regulations*. This Section lists the standard information that must be included in a condition inspection report and a number of these standard items are not present on the Landlord's form. As a result, I do not find that the Landlord's Rental Unit Condition Report meets the criteria to constitute a condition inspection report as outlined in the *Regulations*. Therefore, I give this document no weight and I find that the Landlord has extinguished the right to claim against the deposits. However, as this right pertains to damage to the rental unit, and as the Landlord has also applied for recovery of losses that are not considered damage to the rental unit, I find that the Landlord is still entitled to claim against the deposits.

Section 38 of the *Act* outlines how the Landlord must deal with the security deposit and pet damage deposit at the end of the tenancy. With respect to the Landlord's claim against the Tenant's deposits, Section 38(1) of the *Act* requires the Landlord, within 15 days of the end of the tenancy or the date on which the Landlord receives the Tenant's forwarding address in writing, to either return the deposits in full or file an Application for Dispute Resolution seeking an Order allowing the Landlord to retain the deposits. If the Landlord fails to comply with Section 38(1), then the Landlord may not make a claim against the deposits, and the Landlord must pay double the deposits to the Tenant, pursuant to Section 38(6) of the *Act*.

Based on the consistent and undisputed evidence before me, the Landlord received the Tenant's forwarding address in writing on November 30, 2020. Furthermore, the

Landlord made an Application, using this same address, to attempt to claim against the deposits on December 11, 2020. As the Landlord made this Application within 15 days of receiving the Tenant's forwarding address in writing, and as the Landlord was permitted to claim against the deposits still, I am satisfied that the Landlord has complied with the *Act*. Therefore, I find that the doubling provisions do not apply to the security deposit or pet damage deposit in this instance.

With respect to the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Landlord's claim for the return of the incentives that the Tenant benefitted from when she agreed to a fixed term tenancy of two years but did not stay for the entire agreed upon length, I find it important to note that the Additional Terms B document states that "If you're in breach of your tenancy, or have any arrears throughout the duration of your tenancy, this agreement/offer will be void." While it is the Tenant's position that this agreement does not specifically state that the Landlord is entitled to the incentives back if this agreement is breached, I do not find it reasonable or consistent with common sense or ordinary human experience that the Tenant should be entitled to the incentives despite not honouring the length of the term agreed upon. As such, I grant the Landlord a monetary award in the amount of **$3,200.00** to satisfy this debt.

With respect to the Landlord's request for compensation in the amount of $975.00 for the cost of repairing and repainting the rental unit, I find it important to note that the Landlord's Rental Unit Condition Report does not meet the criteria of the *Regulations* for a valid condition inspection report. As such, I give these forms no weight. However, as the Tenant did not make any submissions to refute the Landlord's claims, I find that I prefer the Landlord's evidence on the whole. I am satisfied that the Tenant caused damage to the walls, including pet damage, that required repairing and repainting. As such, I grant the Landlord a monetary award in the amount of **$975.00** to rectify this damage.

Regarding the Landlord's claim for compensation in the amount of $30.00 for the cost to re-program a fob that was not returned at the end of the tenancy, as the Tenant made

no submissions with respect to this issue, and as the Tenant did not deny only returning one key fob, I am satisfied from the undisputed evidence that the Tenant should be responsible for this cost. Consequently, I grant the Landlord a monetary award in the amount of **$30.00** to compensate the Landlord for this issue.

With respect to the Landlord's claim for compensation in the amount of $240.00 for the cost of cleaning the rental unit, while the Landlord's Rental Unit Condition Report carries no weight, given that the Tenant did not make any submissions or refute B.B.'s submissions, I prefer the Landlord's evidence on the whole. As a result, I am satisfied that the Tenant did not satisfactorily clean the rental unit at the end of the tenancy and I grant the Landlord a monetary award in the amount of **$240.00** to satisfy this claim.

Regarding the Landlord's claim for compensation in the amount of $157.50 for the cost of a flea inspection, as the tenancy agreement stipulated that this was required, and as the Tenant did not make any submissions with respect to this issue, I grant the Landlord a monetary award in the amount of **$157.50** to satisfy this issue.

With respect to the Landlord's claim for compensation in the amount of $4,800.00 for rental loss, there is no dispute that the parties entered into a fixed term tenancy agreement from July 1, 2019 for a period of two years, ending on June 30, 2021. Yet, the tenancy effectively ended when the Tenant gave up vacant possession of the rental unit on November 30, 2020.

I find it important to note that Policy Guideline # 5 outlines a Landlord's duty to minimize their loss in this situation and that the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Moreover, in claims for loss of rental income in circumstances where the Tenant ends the tenancy contrary to the provisions of the Legislation, the Landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit.

Based on the undisputed evidence before me, I am satisfied that the Tenant gave notice to end the tenancy on October 16, 2020, effective for November 30, 2020. At this point in the year, I find it reasonable to conclude that there are fewer prospective tenants looking for a new place to rent. Thus, I am satisfied that by giving notice at this time of year would have significantly reduced the Landlord's likelihood of re-renting for December 1, 2020. I find that this is supported by the Landlord's evidence of having to re-post ads with increasing incentives and rent reductions in an attempt to re-rent the unit.

Ultimately, I am satisfied that the Landlord made reasonable efforts to effectively mitigate this loss and re-rented the unit as quickly as possible. Therefore, I am satisfied that the Tenant is responsible for December 2020 and January 2021 rent. As a result, I grant the Landlord a monetary award in the amount of **$4,800.00** to satisfy this claim.

Finally, regarding the Landlord's claim in the amount of $1,382.94 for the cost of liquidated damages, Policy Guideline # 4 states that a "liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement" and that the "amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into". This guideline also sets out the following tests to determine if this clause is a penalty or a liquidated damages clause:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

Based on the consistent, undisputed evidence before me, I am satisfied that there was a liquidated damages clause in the tenancy agreement that both parties had agreed to. I am also satisfied that the Landlord sufficiently justified their efforts to re-rent the unit and that this amount was a genuine pre-estimate of this loss. However, as the amount of liquidated damages in the tenancy agreement is noted as $1,200.00, I grant the Landlord a monetary award in the amount of **$1,200.00** to satisfy this issue.

As the Landlord was mostly successful in these claims, I find that the Landlord is entitled to recover the $100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

| | |
|---|---|
| Incentive payback | $3,200.00 |
| Drywall repair and painting | $975.00 |

| | |
|---|---|
| Key fob replacement | $30.00 |
| Cleaning | $240.00 |
| Flea inspection | $157.50 |
| December 2020 rental loss | $2,400.00 |
| January 2021 rental loss | $2,400.00 |
| Liquidated damages | $1,200.00 |
| Filing fee | $100.00 |
| Security deposit | -$1,200.00 |
| Pet damage deposit | -$1,200.00 |
| **TOTAL MONETARY AWARD** | **$8,302.50** |

Conclusion

The Landlord is provided with a Monetary Order in the amount of **$8,302.50** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 29, 2021

Residential Tenancy Branch