



# 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      MNSDS-DR, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for return of the security deposit or pet damage deposit and to recover the filing fee from the landlord for the cost of the application.

The tenant and 2 agents of the landlord attended the hearing. One of the landlord's agents and the tenant gave affirmed testimony, and the parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on December 15, 2021 and was to revert to a month-to-month tenancy after December 31, 2022, which ultimately ended on June 6, 2022. Rent in the amount of \$2,445.00 was payable on the 1<sup>st</sup> day of each month, and there are no rental arrears to the end of June, 2022. On November 10, 2021 the landlord collected a security deposit from the tenant in the amount of \$1,222.50 which is still held by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex, and a copy of the tenancy agreement has been provided for this hearing.

The tenant further testified that 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, but the tenant didn't receive a copy of the move-out portion. An employee of the landlord said that the tenant could take photographs, but would not provide the tenant with a copy, saying that she wasn't allowed to.

When the tenant first rented, it was promised to be a complex with amenities, such as a workspace, a gym and a space for pets. However, when the tenants arrived, it was just a building and the landlord said that the amenities might be ready in January or February. People started to complain, and the landlord's agent asked for notices to end tenancies by March and people were to leave by June. If they did, the landlord would return the security deposits.

The tenant sent a notice to end the tenancy effective on June 30, 2022, and moved out on June 6, 2022, leaving the rental unit clean and ready to show to new tenants. During the move-out condition inspection, the tenant knew the landlord had decided not to give the security deposit back because the tenant didn't give another document, provided by the landlord stating that if the landlord was not successful in re-renting, the tenant would be responsible for the rent. The tenant didn't sign the document because other tenants were not required to do so. Another document was presented to the tenant at move-out entitled "Move Out Charge Form" which the tenant signed, but does not agree with it. If the tenant had not signed it, the tenant would not have had any proof that the rental unit was left in a clean and undamaged condition. A copy has been provided for this hearing, and it is not a move-out condition inspection report but does set out what charges "will be deducted from your security deposit." There is no charge for Paint & Drywall, or Flooring & Carpets, Replacement Items, or Keys & Fob's. It shows "Miscellaneous" charges of \$1,222.50, Liquidated Damages and in handwriting says "Lease Break. No Liq Damage Agreement signed" and a move in/move out fee of \$100.00, for a total of \$1,322.50. It also states: "Total amount to be deducted from Security Deposit: \$1,322.50." It is dated June 30, 2022 and contains signatures of a landlord and a tenant.

**The landlord's agent** testified that the tenant provided a notice to end the tenancy in March, 2022 to vacate on June 30, 2022 and the tenant paid rent to the end of June. The rental building is owned by 1 owner, and operates as a strata, but is not a strata.

The tenancy agreement contains a liquidated damages clause in the amount of \$1,222.50, which is related to the cost of re-renting, and not as a penalty. The landlord provided the tenant with the Move Out Charge Form, pre-filled and the tenant reviewed

it and signed it. The fee of \$100.00 for bookings for moving in and moving out are as set out in the tenancy agreement.

The tenants were offered a lease break, to sign another form that was sent to the tenants reiterating breaking the lease. Basically, all terms are in the tenancy agreement, outlining that the landlord can show the unit, and the tenant would keep the rental unit presentable, and if the landlord was not able to re-rent, the tenants would pay for the remainder of the fixed term. The landlord sent emails to the tenants saying that the landlord would very likely be able to re-rent, so the tenants would not have to worry about paying further rent. The landlord was able to re-rent for July 1, 2022.

The tenants were offered to sign the document, allowing the tenants to avoid paying the liquidated damages, which is separate from the tenancy agreement. If the tenant had signed the document, the landlord would not have charged the tenants for the liquidated damages.

With respect to the move-out condition inspection report, a paper form was used, but since the tenant took photographs and didn't require a copy, the landlord didn't provide a copy. The landlord obviously treated the tenant's photographs as a copy.

The tenant's forwarding address was received in writing on June 30, 2022 on the Move Out Charge Form.

#### SUBMISSIONS OF THE TENANT:

The tenant kept everything clean and did what was required, but did not agree to sign another document.

#### SUBMISSIONS OF THE LANDLORD:

There was no damage to the rental unit, and there is no claim by the landlord for cleaning or repairs. The landlord only charged the fees outlined in the tenancy agreement, and would not have charged liquidated damages if the tenant had signed the document offered.

#### Analysis

I have reviewed all of the evidence of the parties. The tenancy agreement clearly shows liquidated damages in the amount of \$1,222.50, half a month's rent payable. The parties agree that the landlord required the tenant to sign another document acknowledging that if the landlord was not able to re-rent, the tenant would be

responsible for the payment of rent to the end of the fixed term. However, that is the law in any event, and I see it as a carrot dangled in front of the tenant.

The tenant testified that the amenities that were to be included in the rent were not available, and the landlord said that the amenities might be ready in January or February. People started to complain, and the landlord's agent asked for notices to end tenancies by March and people were to leave by June. If they did, the landlord would return the security deposits. The landlord's agent agreed with that, testifying that tenants were offered a lease break, to sign another form that was sent to the tenants reiterating breaking the lease.

I accept the undisputed testimony of the tenant that the landlord's agent refused to give the tenant a copy of the move-out condition inspection report, and therefore agree that regardless of taking photographs, the tenant would not have any other proof that the landlord had agreed in writing that the rental unit was left clean and undamaged at the end of the tenancy.

The law states that a landlord must give the tenant a copy of the signed condition inspection report promptly and in any event within 15 days after the later of the date the condition inspection is completed and the date the landlord receives the tenant's forwarding address in writing. In this case, the landlord's agent simply refused to give the tenant a copy.

I find the landlord's actions to be unconscionable, considering that the landlord failed to comply with the *Act* and the regulations, and withheld the security deposit after the tenant refused to sign a document that the tenant was not required to sign, and it would not have changed the landlord's financial position. The landlord can at any time claim loss of rental revenue for the balance of a fixed term that ends earlier. In this case the landlord invited the tenant to give notice to end the tenancy with no liquidated damages charged. Further, the Move Out Charge Form is signed by the tenant, but it does not say that the tenant agreed that the landlord may deduct that amount.

However, given that the tenant signed the Move Out Charge Form, I find that the landlord did not intentionally err by not returning the security deposit within 15 days as required, and should not be required to repay double the amount.

I also accept the undisputed testimony of the landlord's agent that a move-in and move-out fee of \$50.00 each are payable at the end of the tenancy. I order the landlord to return the security deposit of \$1,222.50 to the tenant, less \$100.00 for the move-in and move-out fee, for a total of \$1,122.50.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,222.50.

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: March 10, 2023

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Residential Tenancy Branch