Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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

DECISION

Dispute Codes Landlord: **MNRL-S, MNDL-S, MNDCL-S, LRSD, FFL**
Tenants: **MNSD, FFT**

Introduction

This hearing dealt with the Landlord's Application under the *Residential Tenancy Act* (Act) for:

1. A Monetary Order for the Tenant to pay to repair the damage that they, their pets or their guests caused during their tenancy – holding security and/or pet damage deposit under sections 38 and 67 of the Act;
2. A Monetary Order to recover money for unpaid rent – holding security and/or pet damage deposit under sections 26, 46 and 67 of the Act;
3. A Monetary Order for compensation for a monetary loss or other money owed – holding security and/or pet damage deposit under section 67 of the Act; and,
4. Recovery of the application filing fee under section 72 of the Act.

This hearing also dealt with the Tenants' Application under the Act for:

1. An Order for the return of part or all of the security deposit and/or pet damage deposit under section 38 of the Act; and,
2. Recovery of the application filing fee under section 72 of the Act.

Property manager A.P., senior property manager N.T. attended the hearing for the Landlord.

Tenant M.A., Tenant N.Z. attended the hearing for the Tenants.

Service of Notice of Dispute Resolution Proceeding and evidence (Proceeding Package)

I find that the Tenants were deemed served on May 1, 2024, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Landlord provided a Proof of Service form #RTB-55 to confirm this service. The Tenants confirmed receipt.

I find that the Landlord was deemed served on June 30, 2024, by registered mail in accordance with sections 89(1)(c) and 90(a) of the Act, the fifth day after the registered mailing. The Tenants provided a copy of the Canada Post customer receipt containing the tracking number to confirm this service. The Landlord confirmed receipt.

The Tenants said they served a CD drive with audio evidence to the Landlord. The Tenants did not provide a Digital Evidence Details form #RTB-43 with their audio evidence. The Landlord said the CD drive was corrupted, and they could not open it. Based on the parties' evidence, I find that the Tenants did not follow Rules 3.10.1 to 3.10.5 of the Residential Tenancy Branch (RTB) Rules of Procedure, and I decline to consider the audio evidence they uploaded.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to a Monetary Order for the Tenants to pay to repair the damage that they, their pets or their guests caused during their tenancy?
2. Is the Landlord entitled to a Monetary Order to recover money for unpaid rent?
3. Is the Landlord entitled to a Monetary Order for compensation for a monetary loss or other money owed?
4. Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?
5. Is the Landlord entitled to recovery of the application filing fee?

Tenants:

1. Are the Tenants entitled to an Order for the return of part or all of the security deposit and/or pet damage deposit?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on March 1, 2022. The fixed term ended on February 28, 2023, then the tenancy continued on a month-to-month basis. At the end of the tenancy, monthly rent was $1,501.00 payable on the first day of each month. A security deposit of $718.75 and a pet damage deposit of $718.75 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord stated that the tenancy ended on April 30, 2024. The Tenants stated that the tenancy ended on April 15, 2024.

The parties agreed to the following:

- The Tenants provided their forwarding address to the Landlord on the move-out condition inspection report on April 15, 2024;
- The Landlord does not have an outstanding monetary order against the Tenants at the end of the tenancy;
- The Tenants agreed in writing at the end of the tenancy that they are responsible for paint charges totaling $375.00;
- The parties participated in a move-in condition inspection of the rental unit on March 5, 2022, and the Landlord provided a copy of the report to the Tenants on the same day by docusign; and,
- The parties participated in a move-out condition inspection of the rental unit on April 15, 2024.

The Landlord said that the Tenants took pictures of the move-out condition inspection report and the charge form at the completion of the move-out condition inspection. The Tenants testified that they only received a copy of the move-out condition inspection report from the Landlord in the Landlord's Proceeding Package on May 1, 2024 which is more than 15 days after the move-out condition inspection report.

Landlord's evidence:

The property manager testified that the Tenants provided notice to end their tenancy on February 29, 2024 to the on-site caretaker. The Tenants stated in their notice that they wanted their tenancy to end on April 15, 2024. The property manager asked for the

notice by email, and they received the notice a few days after February 29, 2024 in March. The February 29, 2024 notice would end the tenancy on March 31, 2024. The Tenants did not vacate on March 31, 2024.

The property manager said they do not have tenancy end dates mid-month as they have such a large portfolio. Tenancy agreements in the building are month-to-month. The Tenants did not follow section 14-Ending the Tenancy in the tenancy agreement. The property manager said that the Tenants should have reissued another notice if they did not plan on leaving on March 31, 2024. The property manager said the Tenants only paid for half of the month in April and they seek half a month's rent, $750.50, for the remainder of the month.

The property manager seeks half a month of parking, of which the Tenants had two spots, totaling $125.00. Again, the Tenants only paid for half the month of parking in April 2024.

The property manager seeks half a month for storage totaling $20.00. Again, the Tenants only paid for half the month of storage in April 2024.

The property manager seeks a $150.00 move-out fee. The property manager pointed to section 13(c) of the tenancy agreement additional terms which states that any move-in/move-out fees are due and payable to the strata by the tenant. The Landlord has stratified their building, and these fees are due at move-out. The property managers did not upload an invoice, bill, or letter from the Landlord about the move-out fees being due.

Tenants' evidence:

The Tenants provided their move-out notice to the building manager on February 29, 2024. The building manager signed the move-out notice. The Tenants asked the building manager to let them know if there were any issues with moving out on April 15, 2024.

On March 8, 2024, the Tenants reached out to the building manager, and they were told because this is a month-to-month tenancy, they defaulted our notice to the end of April 2024, and that April 15, 2024 is not a valid end date for their tenancy.

The Tenants spoke to property manager A.P. who told them that this is a month-to-month tenancy. The Tenants said they tried to compromise to an end date of March 31,

2024 because they had provided their notice on February 29, 2024. The Tenants said that property manager A.P. said it was too late to give notice for the end of March.

The Tenants dispute that they owe the Landlord half a month's rent, half of parking fees, and half of storage fees.

The Tenants said their February 29, 2024 notice ended their responsibility for their parking spots and the storage on March 31, 2024. The Tenants said that they did use the parking spots, or just one of them, a bit when they came to the building to pick things up. The Tenants said their storage room was emptied on March 29, 2024.

On April 1, 2024, the Tenants said they just paid half of their rent, parking, and storage. They said they were not aware of section 1 of the parking and storage agreements that stated, "*Either party can terminate this Agreement by giving a 30-day written notice to the other party before the first day of the month for effect on the last day of the following month. Verbal notices will not be accepted.*" They rely on this term now. The Tenants have not provided any documentary or picture evidence that they were not using their parking spaces or the storage space.

The Tenants said they did not pay a move-in fee into the building. The Tenants state that their contract does not specify an amount for a move-out fee. The Tenants pointed to the Landlord's new contract with the new tenant, and that contract specifies that, "*[a] move-out fee of $150 is due and payable to the landlord by the tenant.*"

Landlord's reply:

The Landlord's building manager did sign the Tenants' notice to end tenancy, but the property manager submits the notice was not valid for an end date of April 15, 2024. The property manager argues that their building is too large for them to deviate their practices to have tenancies end mid-month.

The Tenants did not upload any proof that the parking spaces or the storage space was not used after March 31, 2024. The property manager did observe that the Tenants used the parking spaces in April.

The property manager confirmed that there was no damage to the rental unit caused by the Tenants' pet.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Is the Landlord entitled to retain all or a portion of the Tenants' security deposit in partial satisfaction of the monetary award requested?

Section 38 of the Act sets out the obligations of a landlord in relation to a security and pet damage deposit held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or file a claim with the RTB against it within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the Act.

I find the following:

- The parties disagreed on the end date of this tenancy. The Landlord said their tenancies are month-to-month tenancies, and they do not end tenancies mid-month. I find the Tenants still used the rental unit up to April 15, 2024. I disagree with the Tenants that this tenancy ended on April 15, 2024. I find the tenancy ended April 30, 2024.
- The Tenants' forwarding address was provided to the Landlord in writing on April 15, 2024 on the move-out condition inspection report.

April 30, 2024 is the relevant date for the purposes of section 38(1) of the Act. The Landlord had 15 days from April 30, 2024 to repay the security deposit in full or file a claim with the RTB against the security and pet damage deposits.

I find the Landlord did not repay the security or pet damage deposits to the Tenants but filed a claim with the RTB against the deposits on April 24, 2024.

The exceptions in sections 38(2) to 38(4) of the Act state:

> 38 …
>
> (2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under

section 24 (1) [tenant fails to participate in start of tenancy inspection] or 36 (1) [tenant fails to participate in end of tenancy inspection].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant…

The Tenants participated in move-in and move-out condition inspections with the Landlord and therefore did not extinguish their rights in relation to the security and pet damage deposits. Section 38(2) of the Act does not apply.

The Landlord did not have an outstanding monetary order against the Tenant at the end of the tenancy. Section 38(3) of the Act does not apply.

The Tenants did agree in writing at the end of the tenancy that the Landlord could keep **$375.00** for damage to the rental unit. Section 38(4) of the Act does apply.

Given the above, I find the Landlord complied with section 38(1) of the Act in relation to the security deposit. The remainder of the Landlord's claims deal with unpaid rent and a move-out fee, therefore not damage, so I do not need consider if the Landlord has extinguished their right to claim against the security deposit, and the security deposit will not be doubled.

I find the Landlord did not comply with section 38(1) of the Act in relation to the pet damage deposit.

Residential Tenancy Policy Guideline #31-Pet Damage Deposits provides a statement of the policy intent of the legislation. PG#31 is intended to help parties understand issues that are likely to be relevant to the landlord's handling of the pet damage deposit at the end of the tenancy. A pet damage deposit is to be held by the landlord as security for damage caused by a pet. If there is no damage caused by a pet, the landlord is to return the pet damage deposit to the tenant within 15 days after the end of tenancy or

receiving the forwarding address, whichever is later. Filing a claim within 15 days is not a reprieve.

Therefore, the Landlord is not permitted to claim against the pet damage deposit and must return double the pet damage deposit, **$1,437.50**, to the Tenants under section 38(6) of the Act.

Settled claim:

The Tenants have agreed to pay the Landlord $375.00 for damage to the paint in the rental unit. I grant the Landlord a monetary order for this amount.

Is the Landlord entitled to a Monetary Order for unpaid rent?

Section 26(1) of the Act specifies the rules about payment of rent. It states, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants provided notice to the Landlord to end their tenancy on February 29, 2024. The notice specified that the end date of the tenancy would be April 15, 2024.

The property manager said they operate their rentals on a month-to-month basis, and ending a tenancy mid-month is not a valid time for the Tenants to end their tenancy.

Section 45(1) of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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. (Emphasis added)

I find that the Tenants have not proven that they are not responsible for the rent for the rental unit, the parking spaces and the storage space for the full month of April. I find the Landlord has proven that they are entitled to rent for the remainder half of the month in April, the remainder of the parking fees for April, and the remainder of the storage fees for April.

The Landlord has established their claim for unpaid rent, parking, and storage totaling **$895.50** ($750.50 + $125.00 + $20.00). I grant a monetary order under section 67 of the Act for this part of the Landlord's claim.

Is the Landlord entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Landlord must satisfy the following four elements on a balance of probabilities:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the Act, Regulation or tenancy agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and<
- Proof that the landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. h

The Landlord said the Tenants owe $150.00 for a move-out fee. The Landlord pointed to section 13(c) of the tenancy agreement additional terms which states that any move-in/move-out fees are due and payable to the strata by the tenant. The Landlord has not uploaded an invoice, bill, or letter from the Landlord about the move-out fees being due.

The Tenants said they did not pay a move-in fee. The Tenants testified that their tenancy agreement or additional terms does not specify any amount for a move-out fee. The Tenants pointed out that the Landlord's new tenancy agreement does specify an amount for a move-out fee.

Based on the testimonies of the parties, the evidence, and on a balance of probabilities, I find that the Landlord has not established their claim for compensation for a move-out fee. I decline to grant this amount to the Landlord.

Are the parties entitled to recover their application filing fees?

I find that both parties are partially successful in their claims. Both parties must bear their own costs for their filing fees.

The Tenants' monetary order is calculated as follows:

Item	Amount
Security deposit not doubled to Tenants	718.75
Pet damage deposit doubled to Tenants 718.75 X 2 =	$1,437.50
Security and pet damage deposit interest*	$49.80
Settled amount-painting to Landlord	-$375.00
Unpaid rent to the Landlord	-$895.50
Total monetary order to Tenants	$935.55

*There is no interest owed on the deposits in 2022 as the amount of interest owed in that year was 0%. The amount of interest in 2023 was 1.95%. The amount of interest in 2024 was 2.7%. Interest is calculated on the original security and pet damage deposit amounts, before any deductions are made, and it is not doubled. Interest was calculated using the Residential Tenancies Online Tools: Deposit Interest Calculator.

Conclusion

I grant a Monetary Order to the Tenants in the amount of $935.55. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia 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 Act.

Dated: August 17, 2024

Residential Tenancy Branch