Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for a monetary order for damage to the unit, site or property; for 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 tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for 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 for the cost of the application.

The landlord's application was originally scheduled to be heard on January 10, 2013, but the parties agreed that both the landlord's and the tenant's applications should be heard together, and both applications were then scheduled for March 27, 2013.

An agent for the landlord company and the tenant attended the conference call hearing, and the tenant was accompanied by an agent. Both agents and the tenant gave affirmed testimony, and the parties provided evidentiary material to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a monetary claim as against the landlord for return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on March 1, 2012, expired on August 31, 2012 and then reverted to a month-to-month tenancy which ultimately ended on September 30, 2012. Rent in the amount of $1,230.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On January 31, 2012 the landlord collected a security deposit from the tenant in the amount of $615.00 which is still held in trust by the landlord and no pet damage deposit was collected. A move-in condition inspection report was completed by the parties on February 23, 2012 and a move-out condition inspection report was completed by the parties on September 30, 2012. The landlord's agent acknowledges receiving the tenant's forwarding address in writing on September 30, 2012.

The landlord's agent further testified that when the tenant moved out there remained significant scratches to the hardwood floors. A quote for the repair of the floors in the entry, living room and bedroom was received which quotes a cost of $2,368.80. A copy of the quote was provided for this hearing, and the landlord's agent testified that the floor in the bedroom was the worst. Another quote has also been provided for the bedroom and entry only, and is in the amount of $1,416.80. The landlord's agent also pointed out paragraph 24 of the tenancy agreement, which was provided for this hearing and states:

> "24. Floors. All non-carpeted floors must be kept clean and properly cared for by the tenant. The tenant will, within one month of the commencement of this tenancy, carpet all traffic areas that were previously bare floor, to the landlord's reasonable satisfaction. Any furniture located on bare floor must have protective devices on the base or legs to protect the floor from damage."

The landlord has provided 3 black and white photographs marked "bedroom," "hallway" and "living room." The photograph of the bedroom shows significant scratches; the hallway shows 2 scratches; and no scratches are visible in the living room photograph.

The landlord's agent also testified that the first time the agent inspected the rental unit was at move-out and the agent did not see the original condition of the floors at the outset of the tenancy, but the landlord's agents did a full inspection of all units in April

when the property management company took over. When the move-out condition inspection report was completed, the landlord's agent told the tenant to please sign it.

The move-in and move-out condition inspection reports have also been provided, and both are contained in the same form so that the items are shown together at move-in and at move-out. The reports show that at the beginning of the tenancy, the floors were satisfactory, and at move-out the entry had "some scratches," the living room was "scratched," and the bedroom was "very scratched" and "dented." The move-in portion has a section signed by the tenant on February 23 and states, "I agree that this report fairly represents the condition of the rental unit." On the bottom of the form is a statement, signed by the tenant on September 30, 2012 that states: "I agree with the amounts noted above and authorize deduction of any Balance Due Landlord from my Security Deposit and/or Pet Damage Deposit. I further agree to pay the Landlord the amount by which the Balance Due Landlord exceeds the amount of my deposit(s)." The amounts noted above that are a security deposit in the amount of $615.00, unpaid rent in the amount of $1,230.00 and notations that are illegible, but have no dollar amounts, and the Balance Due Tenant is marked as "unknown," and the Balance Due Landlord has been left blank.

The landlord claims $2,368.80, and the agent testified that the tenant was offered to have the floors repaired rather than pay for the quote, but the tenant did not do so despite requesting that option earlier.

The tenant's agent testified to being present at move-in and at move-out and therefore has personal knowledge of the condition of the rental unit. The rental unit is a suite in an old character home and is very old property. Throughout the tenancy, there were lots of problems, especially with the bathroom, and the move-in condition inspection report does not accurately reflect the true condition of the rental unit which was not pristine at the beginning of the tenancy.

The tenant wanted to move to another suite with a patio, but the landlord didn't tell the tenant about renovations that were going to take place, which involved several months of painting and using the tenant's patio for staging, using power from the rental unit for power tools and the workers kept equipment and ladders on the tenant's patio, using it as a base from which they worked. After the tenant had moved out, the tenant was told by the landlord's agent that the landlord had no obligation to disclose to the tenant anything about the renovations.

The tenant's agent further testified that the landlord's agent had provided 2 quotes to the tenant about the floors, one for two rooms only and the other for 3 rooms, and

intimidated the tenant by saying that if the tenant didn't pay the smaller one, the landlord would sue for the bigger one. The tenant obtained a quote for about $550.00, but the tenant and the tenant's agent feel that it's normal wear and tear, and the agent stated that this is just intimidation of a young girl. The parties tried to resolve it from the $550.00 quote and the landlord could keep the security deposit to cover that expense. No agents of the landlord that were there at the time of move-in are here now and the tenant was coerced into signing the move-out condition inspection report.

When questioned why the tenant hadn't mentioned that the painting and renovations were a problem prior to moving out, the tenant's agent replied that it was mentioned to the owner. The tenant's agent is a real estate appraiser and has done so for about 30 years, and testified that the house is a 100 to 130 year old heritage property.

The tenant testified that the owner was contacted verbally in the drive-way about the renovations, but the tenant does not recall the date. The tenant expressed that the tenant was disturbed and was not expecting someone to be on the balcony. The owner promised to talk to the crew, but there was no improvement. While in the bathroom, the tenant would see a man on the balcony of the rental unit.

The tenant has also provided as evidence a letter signed by the tenant that states, in part, that the tenant's agent and witness would testify to the following: "On virtually every occasion I attended the Applicant's apartment, there was some form of physical upgrade and ongoing nuisance occurring at the property. Further, I am aware that the Applicant's primary purpose for renting the apartment was to enjoy the expansive patio area off of the unit. However, for an extended period of time, the patio area was occupied by workmen, tools of the trade and was used as a storage area for contractors. In my opinion, the Applicant' peace and enjoyment was severely hampered."

The tenant also testified that there are errors in the move-out condition inspection report, in that it also states that there are rental arrears, and there never were any rental arrears. Further, the statements respecting damage are exaggerated. The tenant was told by the property manager that a signature was required – that the tenant had to sign.

The tenant claims $1,476.00 for loss of use of the balcony (or patio area), being 20% of the rent paid for the landlord's breach of the tenancy agreement and for breach of Section 28 of the *Residential Tenancy Act*, and recovery of the $615.00 security deposit.

Analysis

Firstly, with respect to the scratched floors, I accept the testimony of the tenant and the tenant's agent that the landlord provided 2 quotes to the tenant for repair costs and told the tenant that if the tenant didn't pay the lower amount, the landlord would seek the higher amount. There is nothing unusual or unlawful about negotiating a settlement in a dispute. The tenant's agent testified that the conversation amounted to intimidation and that the scratches were normal wear and tear. I cannot ignore the tenancy agreement in which the tenant had agreed at the outset of the tenancy to cover the floors and, "The tenant will, within one month of the commencement of this tenancy, carpet all traffic areas that were previously bare floor, to the landlord's reasonable satisfaction. Any furniture located on bare floor must have protective devices on the base or legs to protect the floor from damage." There is no evidence before me that the landlord ever asked to see what the tenant did with respect to the bare floors, so there would have been no way for the tenant to know whether or not the floors were kept to the landlord's reasonable satisfaction. The landlord's agent testified that the rental units were all inspected in April, 2012 which is when the property management company took over as landlords. There is nothing before me to satisfy me that the landlords ever noticed scratches on the floors at that time, or if the landlords noticed what protective coverings were there. The tenancy began on March 1, 2012, and the tenancy agreement requires the landlord to give reasonable satisfaction of such covers within 30 days. That inspection in April would have sufficed to satisfy the tenancy agreement, but neither the owner nor the agents of the landlord company gave any indication of whether or not covers were satisfactory.

With respect to the tenant's claim that the scratches are normal wear and tear, I refer to Residential Tenancy Policy Guideline #40 that states that hardwood floors have a useful life of 20 years. The parties do not know the age of the floors, although the tenant's witness and agent believed them to be original floors and the landlord's agent believed that they had been refinished within the last 20 years, but no one has any real evidence or testimony as to the age, and due to the fact that the rental unit is contained in a heritage building, I'm not convinced that the policy guideline applies to this case.

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate or reduce such damage or loss.

In this case, I am satisfied that some damage exists. I have reviewed the inspection reports, the tenancy agreement, the photographs and the quotes. I am also satisfied that the damage exists as a result of the tenant's failure to comply with the tenancy agreement which requires the tenant to put protective devices on the base or legs of furniture, but the landlord has failed to comply with that portion of the tenancy agreement as well by failing to ensure within one month of the commencement of the tenancy that the coverings were to the landlord's reasonable satisfaction. That is also important for satisfying element 4 in the test for damages. The landlord created the tenancy agreement expecting the tenant to comply, but the landlord did not take the next step by inspecting the rental unit as indicated in the landlord's own tenancy agreement.

With respect to the tenant's claim, the *Residential Tenancy Act* states as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the testimony of the tenant that the owner was notified by the tenant early in the tenancy of the disturbance caused by the renovations and by using the patio area for workmen and contractors' equipment. However, even if the tenant had not made such a complaint, the landlord still had an obligation to comply with Section 28. I also accept the testimony of the tenant that one of the reasons for moving into this rental unit was the patio space. The *Act* also states that a landlord cannot restrict or remove a service or facility unless the landlord gives the tenant notice of such loss and reduces the rent accordingly. In the circumstances, I find that the tenant has established a claim as against the landlord for loss of that space. With respect to quantum, I have no evidence or testimony that satisfies me how much space was lost, but considering the fact that contractors appeared on the patio area, and considering the fact that the landlord's agents did not dispute the amount, only the claim, I agree that 20% is reasonable.

The tenant's application claims $1,476.00 and evidentiary material indicates that the tenant's claim is for 20% of the rent paid from March 31, 2012 to August 31, 2012. I accept that to be the period during which full use of the rental unit was limited. My

calculation shows that rent in the amount of $1,230.00 per month for March 31, 2012 through August, 2012 is 5 months, which totals $6,150.00. Twenty percent equates to $1,230.00, not $1,476.00, and I find that the tenant has established a monetary claim in the amount of $1,230.00.

Since the landlord has not been successful with the claim, the landlord is not entitled to keep any portion of the security deposit and the tenant is entitled to its full return.

In summary, I find that the tenant has established a monetary claim as against the landlord in the amount of $1,230.00 for loss of a portion of the rental unit, and recovery of the security deposit in the amount of $615.00. I further find that the landlord has failed to establish element 4 in the test for damages, and the landlord's application is hereby dismissed in its entirety without leave to reapply. Since the tenant has been successful with the application, the tenant is also entitled to recovery of the $50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,895.00.

The landlord's application is hereby dismissed without leave to reapply.

This order is final and binding on the parties 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: April 16, 2013