Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding City View Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on July 16, 2013. Both parties confirmed that they received one another's written evidence packages. I am satisfied that the above documents were served to one another in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began as a nine-month fixed term tenancy on June 1, 2011. At that time, monthly rent was set at $895.00, payable in advance on the first of each month. At the expiration of the initial fixed term, the tenancy continued as a periodic tenancy. By the time the tenancy ended on June 30, 2013, monthly rent had increased to $965.00. The landlord continues to hold the tenant's $447.50 security deposit paid on May 28, 2011.

The parties agreed that they participated in joint move-in and joint move-out condition inspections of the rental premises. The landlord entered into written evidence signed

copies of the June 18, 2011 and July 4, 2013 condition inspection reports regarding the above-noted move-in and move-out inspections.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous invoices and receipts, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

The landlord's original application was for a $2,500.00 monetary award for damage, which was to include an unspecified amount for replacing vinyl decking on the balcony of the rental unit. In an amended application provided to the tenant, the landlord increased the amount of the requested monetary award to $3,500.00.

By way of a September 6, 2013 Monetary Order Worksheet, confirmed in sworn testimony at the hearing, the landlord's agent (the landlord) reduced the amount of the requested monetary award to $1,699.11. He said that this reduction resulted from actual receipts and a written estimate of the damage to the flooring on the balcony of this rental unit. The landlord's revised application was for damage to the following items:

Item	**Amount**
Steam Cleaning of Carpets	$57.75
Cleaning of Rental Unit	45.00
Replacement of Broken Intercom System	249.40
Replacement of Damaged Blinds	78.14
Estimate for Replacement of Damaged Vinyl Decking on Balcony	1,268.82
Total of Above Items	**$1,699.11**

The landlord entered into written evidence copies of receipts for the first four of the items listed above. The landlord testified that payments have been made for each of these expenses, which the landlord maintained resulted from damage arising out of this tenancy.

To support the last of the items claimed, the landlord provided a copy of a September 6, 2013 written estimate to supply and install a new vinyl roofing membrane to the floor of the deck (balcony) of the rental unit. The landlord also supplied two faxed photographs of poor quality showing a small darker grey circle surrounded by a lighter grey background. The landlord gave undisputed sworn testimony that these were photographs of a burn mark on the deck of the balcony of this rental unit. He noted that the joint move-in condition inspection report signed by the tenant at the beginning of this

tenancy indicated that the tenant agreed that the patio, deck, balcony was in satisfactory condition. By the end of the tenancy, the tenant signed the joint-move out condition inspection report noting a "burn stain on the vinyl floor (balcony)."

The tenant testified that she did not check the balcony when she moved into the rental unit and she only signed the move-in condition inspection report provided to her by the landlord's former resident manager. She said that she believed that the burn mark on the deck was there before she moved into the rental unit. She also claimed that the former resident manager was not very capable in her job and did not attend to a number of issues she raised with her periodically, including her complaint that the intercom system was broken and dysfunctional. She said that at one point the intercom, which she estimated to be over 20 years old, "basically fell apart" and off the wall. She testified that the rental unit was not clean when she moved into it and the landlord has done little to maintain rental units in this 27-unit elevator operated rental building.

The tenant maintained that the landlord's resident manager identified little damage or problem with the condition of the rental unit at the end of her tenancy at the move-out condition inspection. The only two items identified in the Security Deposit Statement portion of the joint move-out condition inspection report were $45.00 for suite cleaning and $57.75 for carpet cleaning.

The landlord testified that the tenant's male friend told him that the intercom was damaged because he and the tenant bumped into it several times.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I will address each of the elements of the landlord's claim in the landlord's Monetary Order Worksheet.

As was noted by the landlord at the hearing, the tenant did sign the move-out condition inspection report on July 4, 2013, signifying that she agreed that this report fairly represented the condition of the rental unit at the end of this tenancy. The move-out report included references to damage to the decking on the balcony, cleaning issues, a broken intercom system and broken blinds.

Based on the evidence before me and on a balance of probabilities, I find in accordance with section 23 of the Residential Tenancy Agreement that the tenant has not shown that she steam cleaned the carpets at the end of this tenancy. I issue a monetary award for the landlord's $57.75 expense incurred by the landlord shortly after this tenancy ended for steam cleaning the carpets. I also allow the landlord's application for a monetary award of $45.00 for general cleaning of the rental unit as I am satisfied by the condition inspection reports that some cleaning was necessary at the end of this tenancy. I find that the landlord's receipt for three hours of general cleaning is reasonable under the circumstances. In reaching the above two findings, I also note that these items and these amounts were specifically identified in the Security Deposit Statement portion of the joint move-out condition inspection report.

There is conflicting evidence with respect to the landlord's claim for repair or replacement of the intercom system in the rental unit, which the landlord maintained arose from damage that exceeded that which would result from reasonable wear and tear. Although the tenant said that the intercom system was not working properly during much of this tenancy, she could not point to any written evidence to document her assertion. She also made no note of a problem with this system in the joint move-in condition inspection report when she commenced her tenancy. However, she also gave undisputed sworn oral testimony that the intercom system for this rental unit allowing access to the secure building was very dated and at least 20 plus years old. The landlord did not know when the intercom system was last replaced in this rental unit. However, he said that the tenant's male friend admitted that the intercom system malfunctioned because the tenant and the male friend bumped it several times causing it to land on the floor.

Residential Tenancy Branch Policy Guideline 40 identifies the useful life of items associated with residential tenancies for the guidance of Arbitrators in determining claims for damage. According to Policy Guideline 40, the useful life of an intercom system in a residential tenancy is estimated at 15 years. Based on this estimate and the tenant's undisputed testimony that this system was at least 20 years old, I find that the intercom system was at the end of its useful life by the end of this tenancy. For this reason, I find that the landlord is not entitled to recover expenses from the tenant to replace an intercom system that was due for replacement at the end of its useful life. I

dismiss the landlord's application for a monetary award for replacement of the intercom in this rental unit without leave to reapply.

Policy Guideline 40 also provides guidance with respect to the useful life of venetian blinds. The estimated useful life of this item is set at 10 years. At the hearing, the landlord gave undisputed sworn testimony that the blinds that had to be replaced at the end of this tenancy were last replaced in 2009. Based on this undisputed testimony and the difference in the condition of these blinds in the two condition inspection reports, I issue a monetary award in the landlord's favour in the amount of $46.88 ($78.14 x 6/10 = $46.88). This award is designed to compensate the landlord for the need to replace these blinds after four years of their anticipated ten year useful life.

Although I have given the landlord's application for a monetary award for damage to the deck on the balcony of this rental unit careful consideration, I find that the landlord has not demonstrated any entitlement to a monetary award for actual losses incurred arising out of this tenancy. As noted above, even if a landlord identifies damage that exceeds that which would arise from reasonable wear and tear, the landlord must also demonstrate actual losses. In this case, over 3 ½ months after this tenancy ended, the landlord has still not undertaken any repairs to replace the flooring that the landlord maintained was damaged. While the landlord has supplied an estimate of the replacement cost, no actual work has been done to repair or replace the item identified in the landlord's claim.

I also note that the landlord was able to re-rent the unit to another tenant who assumed occupancy on July 1, 2013, the day after this tenancy ended. The landlord testified that the new tenant is paying $935.00 in monthly rent, $30.00 less than was being paid by the tenant at the end of her tenancy. I am not satisfied that what appears to be a relatively small burn mark on the balcony of the rental unit had any impact on the landlord's ability to obtain the same rent that the landlord was receiving for the tenancy that ended on June 30, 2013. A whole host of factors, including the tenant's claim that she was paying too much for her rental unit in comparison to what she was receiving, may have factored into the reduction in monthly rent received by the landlord for the new tenancy that began on July 1, 2013.

I also note that Policy Guideline 40 provides some information for consideration on the useful life of flooring. While not exactly similar to vinyl flooring on a deck or balcony, I find that the closest comparison to vinyl flooring on a deck would be for tile floors which are estimated to have a 10-year useful life. I also note that an actual deck or balcony has a 20 year useful life. I find that the useful life of vinyl decking exposed to the elements outside on a balcony would likely be no more than the useful life of tiles

applied to the interior of a rental unit. The landlord testified that the deck was "brand new in 2000." By the end of this tenancy, the existing flooring on the deck/balcony was 13.5 years old. Even if vinyl flooring has a longer useful life than interior tiles, I find that the floor of the deck would likely have been ready for replacement after 13.5 years of exposure to weather and use. For these reasons, I also find that even if the landlord had actually replaced the flooring of the deck (which has not occurred), the landlord would still not be eligible for the recovery of these expenses from the tenant as the flooring of the balcony is past its useful life.

For the reasons outlined above, I dismiss the landlord's application for damage to the flooring of the balcony without leave to reapply.

As the landlord has been partially successful in this application, I allow the landlord to recover the $50.00 filing fee from the tenant.

I allow the landlord to retain the above-noted monetary awards totalling $199.63 ($57.75 + $45.00 + $46.88 + $50.00 = $198.63) from the tenant's security deposit. I order the landlord to return the remaining $247.87 of the tenant's security deposit plus applicable interest to the tenant forthwith. No interest is payable over this period.

Conclusion

I issue a monetary Order in the tenant's favour under the following terms which allows the landlord to retain a portion of the tenant's security deposit to recover monetary awards for damage arising out of this tenancy and his filing fee:

Item	**Amount**
Steam Cleaning of Carpets	$57.75
Cleaning of Rental Unit	45.00
Replacement of Damaged Blinds	46.88
Less Security Deposit	-447.50
Filing Fee	50.00
Total Monetary Order	**($247.87)**

I dismiss the remainder of the landlord's application for a monetary award for damage arising out of this tenancy without leave to reapply.

The tenant is provided with the above Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 22, 2013

Residential Tenancy Branch