



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oak West Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD

Introduction

This was a hearing with respect to the landlord's application for a monetary award and an order to retain the tenant's security deposit in partial satisfaction of the monetary award. The hearing was conducted by conference call. The landlord's representative and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the tenant's security deposit?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy agreement began August 1, 2011 for a one year fixed term and thereafter month to month. The monthly rent was \$2,500.00, payable on the first of each month. The tenant paid a security deposit of \$1,250.00 prior to the commencement of the tenancy.

According to documents submitted by the applicant the rental unit was sold in June, 2014. The sale completed on June 27, 2014 and the purchaser obtained possession of the rental unit on July 1, 2014. The tenant moved out of the rental unit on or about June 30, 2014.

The landlord, who is the property manager for the former owner of the rental unit applied for dispute resolution on July 15, 2014. In the Application the landlord claimed as follows:

At the end of tenancy, there was significant damage to floor areas mainly in and around the entry section, mainly due to dents & scratches caused by high heels (100's of small dents). The tenancy lasted 3 years and the property is 4.5 years old. The property was sold, and a price reduction of \$4,000 was required to credit Buyer's for repair/replacement cost of affected floor areas.

\$75.60 – Cleaning (agreed to by tenant)

\$4,000.00 – Appx value of damaged floor areas (to be settled through arbitration).

The applicant submitted photographs of damaged and dented wood flooring. The landlord did not provide a copy of the purchase and sale agreement, but provide only a copy of the vendor's statement of adjustments that contained a notation with respect to an \$8,000.00 debit said to be: "Credit to Purchaser as per Addendum dated June 13, 2014". The landlord submitted a separate typed page with a handwritten notation. The typed document listed several appliances and apartment fixtures with stated dollar amounts. There was an entry: "Flooring" with a stated amount of \$4,000.00. The handwritten notation provided as follows:

Trades Estimate of various repair/maintenance resulting in total \$8,000.00 credit to Buyer

\$4,000.00 for flooring

The landlord did not submit a copy of the June 13th Addendum to the purchase and sale agreement and it did not submit any form of estimate or quotation for the repair or replacement of the damaged flooring.

The tenant submitted a written statement in which she commented upon the poor quality of the flooring materials in the rental unit. She submitted several statements including one from a flooring company that remarked upon the flooring said to be very soft and easily damages. The tenant submitted that the marks and damage to the floor constituted normal wear and tear in the circumstances, having regard to the three year duration of the tenancy. The tenant acknowledged that the cleaner she hired to clean the rental unit at the end of the tenancy did not perform all of the required cleaning and she acknowledged responsibility for a cleaning charge of \$75.60.

Analysis

The landlord has the burden of proving its claim to an award of damages on a balance of probabilities. The landlord has characterized the damage as a price reduction that is due to the damage to the floor, but without seeing the actual contract of purchase and sale and particularly the a copy addendum that is mentioned in the statement of adjustments, I am unable to attribute the credit to the purchaser to the flooring damage. The landlord has also failed to provide evidence to establish the actual or estimated cost to repair or replace the damaged flooring and this is necessary information to determine whether the supposedly negotiated price reduction was prudent. Without some information to show the repair costs, the landlord has not shown that it has acted properly to mitigate its loss by agreeing to the reduction, rather than performing repairs.

Finally the landlord has not submitted any countervailing evidence to rebut the tenant's contention that the flooring was of poor quality and easily damaged and that the dents and marks to the floor constitute normal wear and tear.

Conclusion

Save for the landlord's claim for cleaning in the amount of \$75.60, I find that the landlord has failed to prove that it is entitled to an additional monetary award, whether characterized as a loss due to price reduction, or for the cost to repair the flooring. I award the landlord the sum of \$75.60. The remainder of the landlord's claim is dismissed without leave to reapply. The landlord has been largely unsuccessful apart from recovering an amount that the tenant agreed to pay and I therefore decline to award the recovery of the filing fee for this application.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been allowed in the amount

of \$75.60 only, and the balance of the claim dismissed without leave to reapply, it is appropriate that I order the return of the balance of the tenant's security deposit; I so order and I grant the tenant a monetary order in the amount of \$1,174.40. This order may be registered in the Small Claims 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: December 19, 2014

Residential Tenancy Branch

