Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ITZEVI MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, OLC, FF

Introduction

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

- a monetary order for return of all or a portion of his security deposit, pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's two agents, "landlord IT" and "landlord BL" (collectively "landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord IT confirmed that she is the president of the landlord company named in this application. Landlord BL confirmed that she is the building manager for the rental building involved in this application. Both landlords IT and BL confirmed that they had authority to represent the landlord company named in this application, as agents at this hearing.

The tenant testified that he served the landlord with the tenant's Application for Dispute Resolution hearing package ("Application") on January 26, 2015, by way of registered mail. Landlord IT confirmed receipt of the tenant's Application on behalf of the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Landlord IT testified that the tenant was served with the landlord's written evidence package on February 3, 2015, by way of registered mail and on February 4, 2015, by handing it to the tenant personally. The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package.

During the hearing, the landlord consented to the tenant's request to amend his application to correct the name of the landlord company in the style of cause for this application. In accordance with section 64(3)(c) of the *Act*, I amended the tenant's application and the correct name of the landlord company now appears in the style of cause on the front page of this decision.

Issues to be Decided

Is the tenant entitled to a monetary order for the return of double the amount of his security deposit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that this fixed term tenancy began on January 1, 2014 and ended on December 31, 2014. Both parties agreed that the tenant vacated the rental unit on December 30, 2014. Monthly rent in the amount of $1,200.00 was payable on the first day of each month. A written tenancy agreement was provided with the tenant's Application.

Both parties agreed that the tenant paid a security deposit of $600.00 to the landlord on January 1, 2014. Both parties agreed that a move-in condition inspection occurred on December 27, 2013 and a move-out inspection occurred on December 30, 2014. Both parties agreed that they signed the move-in and move-out condition inspection report and the tenant received a copy of the report from the landlord. Both parties agreed that the tenant provided a forwarding address in writing to the landlord on December 30, 2014, as indicated on the move-out condition inspection report. Both parties agreed that the landlord returned $300.00 of the tenant's security deposit and the tenant accepted this payment from the landlord. Both parties agreed that the tenant rejected the landlord's first cheque returning a portion of the security deposit, in the amount of $300.00 from January 6, 2015. Both parties agreed that the tenant accepted the landlord's cheque of $300.00 for the return of a portion of the security deposit, that was resent a second time on January 27, 2015. Both parties agreed that the landlord continues to retain $300.00 of the tenant's security deposit.

Landlord BL indicated that $300.00 was retained from the tenant's security deposit to cover painting costs after the tenant vacated the rental unit. Landlord BL indicated that this amount was indicated in the move-out inspection report and that the tenant agreed

to this deduction in writing. Landlord BL stated that the tenant was verbally advised upon move-in that any painting colours that were not the landlord's approved colours, would have to be returned to the appropriate colours at the end of the tenancy. The tenant denied that he was advised about this policy at the beginning of this tenancy. Landlord BL stated that the two kitchen walls were painted a yellow colour by the "former occupant," JH, with the permission of the landlord. Landlord BL indicated that yellow was not an approved landlord colour and that the former occupant intended to repaint the rental unit at the end of his tenancy but that the tenant asked for the colour to remain the same. Accordingly, no repainting was done by the former occupant or the landlord prior to the tenant occupying the rental unit. The tenant states that he did not prevent the landlord from changing the paint colour but rather that he was agreeable to the colour already in the rental unit. The tenant states that if he was aware of the landlord's colour policy, he would have asked the landlord to complete the colour change at the beginning of his tenancy.

Landlord BL indicated that approximately $2,604.00 was expended to repaint the rental unit after the tenant vacated but only $300.00 was being charged to the tenant for a paint colour change. The landlord did not provide a copy of the receipt for this painting but indicated that the work was completed on January 5, 2015 and the landlord paid the invoice on January 13, 2015. Landlord BL indicated that the walls, trims, doors, frames and cabinets of the bathroom, kitchen and living room were repainted back to the landlord's acceptable colours. Landlord BL stated that an extra coat of paint was required to return the paint to the landlord's acceptable colours.

The landlord provided a copy of the condition inspection report with its written evidence, indicating that $300.00 was being deducted for "damage repair/replacement" upon move-out. Landlord BL confirmed that an error was made when she filled out the move-out inspection report and did not indicate that painting had to be done in the rental unit. The condition inspection report clearly states that areas that needed to be painted should be indicated by "P." The landlord indicated that all areas of the rental unit were satisfactory upon move-out by indicating a checkmark in the report. Specifically, all areas, including the walls and cabinets of the kitchen, bedrooms, living room, bathroom, entryways, hallways, were indicated as being "satisfactory" upon move-out.

The tenant indicated that he signed the condition inspection report under protest, as he felt pressured by landlord BL, he was tired and rushed during the appointment and he felt he had no other choice. The tenant stated that once he had the opportunity to reflect on these events and after speaking with the Residential Tenancy Branch and property managers for various buildings, he realized that he should not be responsible for the condition of the rental unit during the former occupant's tenancy. At this point,

the tenant revoked his written consent to the $300.00 deduction from his security deposit and provided the landlord with a letter, dated January 7, 2015, returning the $300.00 partial security deposit cheque to the landlord. The letter explains the above reasons as well as the fact that the tenant was not aware of the landlord's policy regarding the paint colour change. The landlord indicated that the tenant cannot revoke his written consent.

Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters, emails, photographs, and the testimony of the tenant, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 38 of the *Act* requires the landlord to either return all of the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or if an amount at the end of the tenancy remains unpaid (section 38(3)(b)).

The tenant seeks the return of double the value of his security deposit from the landlord. Initially, the tenant sought $1,200.00 but acknowledged that he had accepted $300.00 back from the landlord. The tenant stated that he accepted this payment because he was entitled to his deposit back, not because he agreed with the landlord's position to retain the remainder of his deposit. The tenancy ended on December 30, 2014 and the tenant provided his forwarding address to the landlord in writing on the same date. The landlord did not return the remaining $300.00 to the tenant or make an application for dispute resolution to claim against this deposit, within 15 days of the end of the tenancy.

On a balance of probabilities, I find that the tenant was unable to adequately provide the landlord with written permission to retain any amount from his security deposit. The tenant was not given proper notice of the landlord's colour change policy at the beginning of the tenancy. The landlord did not provide any written documentary evidence of this fact. The landlord only provided written notice to the tenant about this policy after the tenant vacated the rental unit. The tenant is not responsible for the state of the rental unit at the end of a former occupant's tenancy. The tenant's tenancy

agreement does not assist the landlord, as it states in clause 14 “use of rental unit” that painting may be done only with the landlord’s prior written consent and with landlord-approved colours. It does not state that the tenant will be charged a fee for returning any inappropriate colours to the “approved colours” at the end of the tenancy. Moreover, the tenant did not paint this unit himself, but rather the former occupant did.

I attach very little weight to the former occupant’s letter of December 30, 2014, which the landlord initially indicated was sent in 2013. I find it questionable that, as per the landlord’s position, this former occupant, who is a friend of the tenant, voluntarily sent this letter without a request from the landlord. This letter confirms that it was only the kitchen area that was painted with a different colour, with no reference to the bathroom or living room. The letter does not confirm the landlord’s policy of the paint colour change, stating only that the tenant “wanted me to leave the kitchen the colour I painted it.” No reference is made to the costs for repainting the unit back to the landlord’s acceptable colours. The tenant stated that the former occupant did not advise him of any costs for repainting as per the landlord’s colour policy. The tenant stated that the former occupant advised that he painted the two kitchen walls for $50.00 and the former occupant was surprised that the landlord was attempting to charge $300.00 to repaint.

Most concerning is the fact that the landlord did not indicate anywhere on the move-out inspection report that any painting or colour change had to be completed in the rental unit. No indication was given that $300.00 was being deducted for a colour change to repaint the kitchen, bathroom or living room. The landlord indicated to the tenant, by way of a letter, dated January 27, 2015, that repainting had to be done on the kitchen walls only, as per the landlord’s colour change policy. This was after the tenant had vacated the rental unit. However, landlord BL testified that repainting also had to be done to the kitchen cupboards, the bathroom and living room walls and doors. Therefore, the tenant was unable to properly consent to a deduction for this painting cost. The tenant was unaware of the nature of the cost, given the unclear move-out inspection report which indicated that all areas of the rental unit were satisfactory. No explanation was given for the $300.00 deduction aside from a general “damage” statement. The landlord’s position also changed at the hearing with respect to the areas that had to be repainted.

Accordingly, I find that the tenant did not provide written consent to the landlord for a deduction of $300.00 from his security deposit, as per section 38(4)(a) of the *Act*. The landlord continues to hold the remainder of the tenant’s security deposit of $300.00. In accordance with section 38(6)(b) of the *Act,* the tenant is entitled to double the value of his entire $600.00 security deposit, less the $300.00 already returned to the tenant on

January 27, 2015. No interest is payable on the landlord's retention of the tenant's security deposit.

As the tenant was successful in his Application, he is entitled to recover the $50.00 filing fee from the landlord.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $950.00 against the landlord under the following terms, which allows the tenant an award of double his security deposit, less the amount returned to him, plus the filing fee:

Item	**Amount**
Return of Double Security Deposit as per section 38 of the Act ($600.00 x 2 = $1,200.00)	$1,200.00
Less deposit amount returned to the tenant on January 27, 2015	-300.00
Recovery of Filing Fee for Application	50.00
Total Monetary Order	**$950.00**

The tenant is provided with a monetary order in the above terms and 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 and enforced as an Order of that Court. As I have issued the monetary order above, this satisfies the tenant's application for an order for the landlord to comply with the *Act*, regarding the return of his security deposit.

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 02, 2015

Residential Tenancy Branch