Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNDL-S**

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 pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72;

The landlord attended the hearing, represented by property manager AA (landlord) and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant did not attend this hearing, although I left the teleconference connection open until 1:42 P.M. to enable the tenant to call into this hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the Notice of Hearing package via registered mail on November 26, 2018. The landlord provided a tracking number. I find the tenant has been deemed served with the Notice of Hearing package five days later, on December 1, 2018 in accordance with sections 89 and 90 of the *Act.*

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?
Is the landlord entitled to retain the security deposit to set-off any monetary award?
Is the landlord entitled to recover his filing fee for this application?

Background and Evidence

The landlord provided a copy of the tenancy agreement. The persons named on the tenancy agreement are the owners of the rental unit and they are represented by the property management company named as landlord in this application. The tenancy started on October 1, 2014 for a fixed one-year term, continuing on a month to month basis at the agreed rent of $1,950.00 per month until the tenancy ended. At the commencement of the tenancy, the landlord accepted a security deposit in the amount of $975.00 and he continues to hold it.

A beginning of tenancy condition inspection report was signed by both parties on September 30, 2014. Noted amongst other deficiencies on the report are nail holes in the walls and trim of the living room, holes from shelving in the walls and trim of the master bedroom and holes from shelving in the second bedroom

On September 28, 2018, the tenant signed a Mutual Agreement to End a Tenancy, ending the tenancy on October 31, 2018. The landlord received the tenant's forwarding address on November 13, 2018 and supplied a copy of the written notice as evidence. The landlord filed for dispute resolution seeking to retain the security deposit ten days later on November 23, 2018.

On October 30, 2018, the tenant vacated the rental unit by leaving the keys with the concierge at the front desk of the apartment. The landlord offered the tenant October 31, 2018 at 4:30 p.m. as an initial date for condition inspection and this offer was refused or ignored by the tenant. November 1, 2018 at 4:30 p.m. was offered as a second opportunity for inspection, but no copy of an offer in writing was provided as evidence in this hearing. The landlord testified that the second opportunity for inspection was also ignored or refused by the tenant. On October 31, 2018 the landlord completed a move-out inspection report without the tenant participating.

During the course of the tenancy, the tenant occasionally rented out her suite as a short-term vacation rental in violation of strata bylaws, causing fines for the landlord. Two letters from the strata management company to the landlord were submitted as

evidence of the fines. The first one dated March 13, 2017 advises the landlord of a fine in the amount of $200.00 for breach of the bylaws for failure to submit a move in fee or file a *Strata Property Act* Form K form for a move-in/occupancy change that occurred in February 2017. The second one dated September 5, 2018 advises the landlord of a fine in the amount of $200.00 for the exact same bylaw breaches that took place on April 30, 2018, May 16, 2018, and July 10, 2018.

The move-out condition inspection report prepared by the landlord on October 31, 2018 and the monetary order worksheet submitted by the landlord indicates that when the tenant moved out, the rental unit was left in damaged condition. The damages to the suite required $800.00 worth of wall repair and painting, $580.00 worth of cleaning and carpet cleaning, window handle replacement worth $180.00, storage locker content removal worth $200.00 and mailbox and storage locker key replacement worth $35.00. Pictures depicting the condition of the walls, floors, bathroom, kitchen appliances, and window handles were provided as evidence of what the unit looked like after the tenant moved out and a written estimate from a cleaning and restoration company was also submitted.

Analysis of damages to the rental unit

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 to 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.

Strata bylaw infraction fines

Section 7(1) of the Act establishes that a tenant who does not comply with the *Act,* the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord gave undisputed testimony and provided two letters from the strata corporation demonstrating that during the course of the tenancy, the tenant had used

the rental unit as short term accommodation in violation of the strata corporation's bylaws. For the violations, the landlord was twice fined $200.00. The landlord has proven that the tenant has failed to comply with the tenancy agreement by assigning or subletting the rental unit without the landlord's consent. The landlord has suffered a financial loss for the two violations caused by the tenant and is therefore entitled to an award of $400.00 pursuant to section 7(1) of the *Act*.

Wall Repairs and Painting

Residential Tenancy Policy Guideline 1 (PG-1) provides guidance for the landlord and tenants' responsibilities. The guidelines for nail holes and painting are reproduced below:

NAIL HOLES:

1. Most tenants will put up pictures in their unit. The landlord may set rules as to how this can be done e.g. no adhesive hangers or only picture hook nails may be used. If the tenant follows the landlord's reasonable instructions for hanging and removing pictures/mirrors/wall hangings/ceiling hooks, it is not considered damage and he or she is not responsible for filling the holes or the cost of filling the holes.
2. The tenant must pay for repairing walls where there are an excessive number of nail holes, or large nails, or screws or tape have been used and left wall damage.
3. The tenant is responsible for all deliberate or negligent damage to the walls.

PAINTING

The landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible

The landlord claims he paid a company $800.00 to paint the unit and fill nail holes due to the damage caused by the tenant. However, noted in the initial condition inspection report, nail holes and holes from shelves were already present. In addition, the photograph submitted by the landlord as evidence of wall damage shows an undamaged yet lightly marked wall.

The tenancy lasted for just over four years. Four years is an interval that is considered reasonable before the interior of the unit would require repainting. I find the landlord has not proven on the balance of probabilities that the tenant caused damage to the walls nor am I satisfied that the tenant caused damage to the paint beyond normal wear

and tear that would likely be expected following a four year tenancy. For this reason, I dismiss the landlord's claim for wall repairs and painting.

Cleaning unit and carpet

PG-1 states the tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. While the monetary order worksheet refers to a claim of $580.00 for cleaning unit and carpet, there is no evidence of any 'damage' to carpets caused by the tenant. From the photographs provided as evidence, it appears the suite's floorcovering is entirely hardwood and tile, lacking carpeting at all. While the photographs show a suite that was left in a state that may not be described as "move-in ready", I find that the unit was left reasonably clean and without damage. As no evidence of actual damage to the suite with respect to carpets or cleaning of the suite has been presented, I decline to award the landlord a monetary award for cleaning and carpet cleaning.

Replacing 2 window handles

From the photographs provided and the testimony of the landlord I accept the landlord's undisputed evidence that the window handles were broken at the end of the tenancy. The landlord has paid $180.00 to have them fixed and submitted an estimate of $180.00 to repair the handles. I grant the landlord a monetary award in the amount of $180.00 to repair the window handles.

Storage locker content disposal

The estimate from the landlord's cleaning company indicates a fee of $200.00 for disposal of the contents of the locker. Though the condition inspection report indicates 'stuff removal needed' in the storage locker, there was no evidence of a disproportionate amount of rubbish being removed from it. I find that an award of $200.00 is excessive for this work and I award the landlord $75.00 for storage locker content removal and disposal.

Mailbox and storage locker key

I accept the landlord's undisputed evidence that at the end of the tenancy he had to replace the lock to the storage locker and that the key to the mailbox was not returned. I am satisfied that it cost $35.00 to replace the missing mailbox key and purchase a new lock for the storage locker. I award the landlord $35.00.

Analysis regarding return of security deposit

The landlord testified that he gave the tenant two opportunities for a condition inspection report at the end of the tenancy. Although he testified that November 1, 2018 at 4:30 p.m. was offered as the final opportunity for inspection, he did not provide proof that he served the tenant with a copy of a *Notice of Final Opportunity to Schedule a Condition Inspection (form RTB-22)*. Also, since November 1, 2018 is the day following October 31, 2018, the day the landlord conducted the condition inspection without the tenant, I find that it would be improbable that this was the final date for inspection offered in writing to the tenant.

Section 17 of the *Residential Tenancy Regulations* state that the landlord must propose a second opportunity, different from the [first opportunity] to the tenant by providing the tenant with a notice in the approved from. I find that the landlord failed to offer the tenant the two opportunities, as prescribed, for the inspection contrary to section 35(2) of the *Act.* Based on this finding, the landlord's claim against the security deposit for damage to the residential property is extinguished in accordance with section 36(2)(a) of the *Act.*

Despite the finding that the landlord's right to retain the security deposit was extinguished, the offsetting provisions of section 72 of the *Act* allows the landlord to draw on the deposit if an arbitrator orders the tenant to pay any amount to the landlord.

In accordance with section 72 of the *Act,* I allow the landlord to deduct the items listed below from the tenant's security deposit.

Item	**Amount**
Strata bylaw fines	$400.00
Two window handles	$180.00
Storage Locker content disposal	$75.00
Mailbox and storage locker key	$35.00
Recovery of Filing fee for this application	$100.00
Total Monetary Award	$790.00
Less security deposit held	-($975.00)
To be returned to the tenant	**$185.00**

Conclusion

I ORDER that $185.00 of the security deposit is to be returned to the tenant.

The tenant is given a formal Order in the above terms and the landlord must be served with **THIS ORDER** as soon as possible.

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: January 17, 2019

Residential Tenancy Branch