Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing was convened by way of conference call concerning an amended application made by the landlord seeking a monetary order for damage to the rental unit or property; 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 tenants for the cost of the application.

The landlord and both tenants named in the application attended the hearing and each gave affirmed testimony. During the course of the hearing, it was determined and agreed upon that the second named tenant is not named in the tenancy agreement, and is the daughter of the first named tenant. Since the second named tenant is not a party to any agreement, I dismissed the landlord's application with respect to that tenant, and determined her to be a witness for the tenant.

The parties were given the opportunity to question each other and the witness and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2016 and was renewed for a month-to-month tenancy commencing December 1, 2017 which ultimately ended on July 1, 2018. Rent in the amount of $1,250.00 per month was

payable on the first day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $625.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium suite, and a copy of the tenancy agreement has been provided as evidence for this hearing.

A move-in condition inspection report was completed by the parties, and a copy has been provided for this hearing. It shows that the flooring in the living room was in fair condition and is noted with "some scratches." The flooring in the entry, kitchen, dining room, main bathroom and both bedrooms is indicated on the report as "Good." It is signed by the tenant indicating that the report fairly represents the condition of the rental unit.

The landlord testified that at the end of the tenancy the hardwood floor was scratched significantly, substantially more than at move-in. A letter to the landlord dated July 18, 2018 has also been provided which is from a flooring company estimating the cost to refinish the floors at $1,575.00, which the landlord claims as against the tenant. The cost includes preparation and refinishing the entrance, hallway, living area and nooks.

The landlord further testified that prior to the tenancy the landlord had invested $10,000.00 on upgrades and the entire rental unit was in near perfect condition at the beginning of the tenancy. A copy of a Work Order dated November 17, 2016 has been provided for this hearing, which shows that walls and trim had been painted in the bathrooms, 2 bedrooms, kitchen and living room.

The tenants were supposed to be out of the rental unit by June 30, 2018, however when the landlord arrived on July 1, 2018, the landlord noticed that the walls required painting again. The landlord claims $2,580.00 for re-painting, and has provided an "Agreement for Painting" with a painting company as evidence for this hearing dated July 12, 2018. It includes the living room, bedrooms, ensuite/bathroom, hallway/entrance and kitchen walls for $2,580.00 and an additional $730.00 for ceilings, which the landlord does not claim as against the tenant.

No move-out condition inspection report was completed by the parties, however the landlord has provided photographs showing the condition of the walls and hardwood flooring at the end of the tenancy, and testified as to which rooms each of the photographs were taken.

The tenant (SM) testified that painting was still being done when the move-in condition inspection report was completed, and there was scaffolding in the living room and bedroom as well as drop cloths, flooring supplies and a table saw in the entrance.

Therefore, inspection of the flooring was not entirely possible. Someone was also working in the kitchen for a week and a half or 2 weeks after the tenants moved in. The landlord also had other hardwood to place in the area, and the flooring is not industrial and not made to withstand moving furniture. Any scratches caused during the tenancy are normal wear and tear. The tenant denies that pets scratched the floors, and no previous landlords have ever claimed that the tenants' pets scratched anything.

The landlord did not sign the move-in condition inspection report.

The landlord hasn't provided any photographs of the walls except for in the bedrooms, but claims painting for every room. The tenants only hung about 5 pictures and left no holes except for small nail holes. The tenant agrees that the rental unit was painted in December, 2016 but the paint in the kitchen and other places was bleeding through. It was not a professional paint job and the tenant told the landlord she had been over-charged. The tenant had agreed to re-paint the bedrooms and had a friend who is in the painting profession to do so, but that didn't happen. The tenant bought the wrong color of paint and told the landlord the tenant would buy that paint colour and is willing to fix it. Copies of text messages exchanged between the parties have been provided as evidence for this hearing. One string is dated July 2, 2018 and states that the landlord noticed the front entrance wall was patched, and the tenant replied that she would match the paint to the existing colour and asks if there is anything else that would affect the security deposit. The landlord's reply is, "Not that I saw. Thanks, will catch up on Wed." The tenant also believes that the scratch marks shown in one of the photographs provided by the landlord are from the sofa rubbing against the wall, which is normal wear and tear.

The tenant provided the landlord with a forwarding address in an email on July 7, 2018.

The witness (RB) testified that she is the daughter of the other tenant and is named incorrectly in the landlord's application.

The witness also testified that during the move-in condition inspection, the parties were walking around a "reno zone." The witness' aunt was also there and there was a discussion about doing the report and then doing another after the work was completed. The floor in the witness' bedroom had paint drops all over it, and the contractor was still working in the master bedroom.

The witness does not disagree that the wrong paint colours were used, but does not agree that the entire rental unit required painting at the end of the tenancy. One of the landlord's photographs shows a scratch from the sofa, and the landlord hated that wall and said not to worry about the living room wall.

Landlord's Submissions

The landlord denies that there was any bleeding in the paint job that was completed prior to the tenancy. The rental unit was in perfect condition at the beginning of the tenancy except for 2 scratches on the hardwood floor. On July 7, 2018 the landlord sent the photographs to the tenant and mentioned repairs that needed to be done.

Tenant's Submissions

The tenant (SM) has provided written submissions stating that the tenant was not notified of the landlord's dispute until served with the Hearing Package and evidence. Further, the tenant made requests for a few days to return to match the paint and paint the bedrooms, but the only reply from the landlord was "she would catch up on wed," which has not happened.

Analysis

The *Residential Tenancy Act* requires a landlord to ensure that the move-in and move-out condition inspection reports are completed by the parties, and the regulations go into great detail of how that is to happen. It also states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The right of the landlord to claim against a security deposit for damage to the property is extinguished if the landlord fails to comply. In this case, there is no dispute that the landlord did not cause the move-out portion to be completed, and therefore, I must find that the landlord's right to make a claim for damages against the security deposit is extinguished.

However, the landlord's right to make a claim for damages is not extinguished. Where a party makes a damage claim, the party must establish that the damage or loss exists, that it exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement, and the amount of such damage or loss.

I have reviewed all of the evidentiary material provided by the parties, and note that the text messages exchanged indicate that the tenant purchased or provided paint to cover damages but it was not the correct colour, and the tenant made efforts to return after the tenancy had ended to right the incorrect repair. A tenant is required to repair any damage caused by a tenant and to leave the rental unit reasonably clean and undamaged at the end of the tenancy. In this case, the tenancy ended on June 30, 2018 and the evidence shows that the tenant attempted to correct the paint well after June 30, 2018. A landlord does not have to consent to that.

The tenant and witness also testified that there is no dispute with respect to the bedroom walls, but disagree to re-painting the entire unit. The landlord has provided evidence of having painted the entire rental unit in November, 2016, and specified in her testimony which rooms the photographs were taken after the tenancy ended, including the living room and hallway.

Further, the move-in condition inspection report, to which the tenant agreed at the beginning of the tenancy, shows that all of the walls were "Good," which is the highest ranking in the legend of the form. I am satisfied that the landlord has established a claim for painting the rental unit. The useful life of indoor paint is 4 years. Given that 2 years have passed, I order that the cost be pro-rated, and I find that the tenant is liable for the sum of $1,290.00.

With respect to flooring, I do not accept that scratching the floors while moving furniture is normal wear and tear. A tenant must take care in moving furniture to ensure that there is no damage to floors. The tenant agreed that the move-in condition inspection report was a fair representation, and if the flooring was covered, the tenant ought to have checked prior to signing the report. The photographs provided by the landlord show many scratches and damage to the hardwood. The useful life of hardwood is 20 years, ~~and given that 2 years have passed, I find that the tenant is liable for a pro-rated amount of $1,417.50 ($1,575.00 / 20 = $78.75 X 18 years remaining = $1,417.50~~) however, any award must not put the landlord in a better position than the landlord would be if the tenants had not caused any damage. There is no evidence before me to suggest the age of the hardwood in the living room other than the testimony of the landlord that the living room flooring was not new. Any award in this case may very well provide the landlord with new flooring, when the landlord would not have new flooring otherwise, and I dismiss the landlord's application for refinishing the hardwood flooring in the living room.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the $100.00 filing fee.

The *Act* requires a landlord to return the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing or must make an Application for Dispute Resolution claiming against the security deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. Further, where a landlord's right to make a claim for damages against the security deposit is extinguished, a landlord may only apply to keep the security deposit for money owed other than damages, and

therefore must return the security deposit to the tenant within that 15 day period if there is no other claim.

The tenant testified that the tenants' forwarding address was provided in an email to the landlord on July 7, 2018. The landlord agrees that the tenants' forwarding address was provided and believed it was by text message. The landlord made the Application for Dispute Resolution on July 17, 2018 and served the tenant at an address that is not the address of the rental unit. Having found that the landlord's right to claim against the security deposit for damages is extinguished, I also find that the tenant is entitled to double recovery.

In summary, I find that the landlord has established a monetary claim as against the tenant (SM) for painting in the amount of $1,290.00, ~~flooring repair in the amount of $1,417.50~~ and recovery of the $100.00 filing fee, for a total of ~~$2,807.50~~ $1,390.00. Pursuant to the *Residential Tenancy Act*, I set off the claim from double the security deposit totalling $1,250.00, and I grant a monetary order in favour of the landlord for the difference in the amount of ~~$1,557.50~~ $140.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of ~~$1,557.50~~ $140.00.

This order is final and binding 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: October 31, 2018
AMENDED March 08, 2019

Residential Tenancy Branch