Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- a monetary order for money owed or compensation for damage pursuant to section 67;
- authorization to retain all or a portion of 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, to call witnesses and to cross-examine one another. As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by registered mail by the landlord on June 18, 2019, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written and photographic evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the commencement of this hearing, I checked the spelling of the landlord`s name. As the spelling of the second name of the landlord was incorrect, I changed the spelling to that which correctly appears above with the permission of the parties.

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

The parties signed a one-year fixed term Residential Tenancy Agreement (the Agreement) on January 29, 2019 and February 6, 2009. According to the terms of the Agreement entered into written evidence this tenancy was to run from February 1, 2009 until January 31, 2010. When the initial term ended, this tenancy continued as a month-to-month tenancy. Monthly rent was initially set at $925.00 per month, but by the end of this tenancy monthly rent had increased to $1,035.00, payable in advance on the first of each month. The landlord continues to hold the tenant's $462.50 security deposit and a $75.00 key deposit for this tenancy.

The parties agreed that they undertook a joint move-in condition inspection on January 29, 2009, and a joint move-out condition inspection on May 28, 2019, when the tenant surrendered vacant possession of the rental unit to the landlord. Reports of both of these inspections were entered into written evidence by the landlord.

The landlord listed the following components to their claim for a monetary award of $996.00 in their June 10, 2019 application for dispute resolution:

Item	**Amount**
Carpet Cleaning	$166.00
General Suite Cleaning	385.00
Repair of Damaged Walls	200.00
Repair of Damaged Doors	200.00
Repair of Damaged Light Fixture	45.00
Total of Above Items	**$996.00**

The landlord also requested the recovery of their $100.00 filing fee from the tenant.

Although the landlord entered into written evidence a Monetary Order Worksheet, the items identified in that document totalled $14,830.54, and were apparently submitted as evidence that the landlord had undertaken major repairs after this tenancy ended. Landlord Representative GN (the landlord) said that many of these repairs and upgrades had to be undertaken as a result of the extensive damage that had arisen during the course of this tenancy.

The landlord also supplied many photographs to show the extent of the damage that had arisen during this tenancy, much of which could not be repaired while the tenant was still living there.

The tenant did not dispute the contents of the condition reports, which showed that the condition of the rental unit had greatly deteriorated during the course of this tenancy or any of the photographs that the landlord entered into evidence. The tenant's chief concern regarding the landlord's evidence was that the landlord's evidence did not have specific invoices in place for each of the items identified in the landlord's claim. The tenant alleged that many of the items listed in the landlord's application were incorporated within extensive renovations and upgrades that the landlord undertook once this lengthy tenancy ended. The tenant said that there had been little routine maintenance undertaken by the landlord during the course of this tenancy, and that clams for items such as the replacement of doors and the repair of damaged walls were necessary as a result of wear and tear that would have occurred since these items were first installed. The tenant also questioned the timing of the landlord's claim for general suite cleaning, which was only completed after the extensive renovations had been completed, almost two months after this tenancy ended. The tenant also questioned the absence of any receipt for professional carpet cleaning, since the landlord had taken this opportunity to replace the existing carpeting within the rental unit with new flooring.

The landlords' representatives claimed that many of the items identified in their request for a monetary award were so extensively damaged that there was no way that repairs could be undertaken. The landlord was familiar with the Residential Tenancy Branch's (the RTB's) Policy Guideline 40, which provides guidance regarding the Useful Life of Building Elements in a residential tenancy. They said that they were informed by RTB staff they contacted that this material had been created as a guideline only and was open to interpretation by Arbitrators depending on the circumstances of the matter before them. The landlord asserted that the doors in this rental building had been custom designed, and that replacement of any one door required the replacement of all doors within a rental unit. Even though the doors were beyond their normal useful life, the landlord asserted that the doors were in good condition when this tenancy began and some had been severely damaged during this tenancy. Similarly, the landlord testified that the photographs demonstrated that the walls and even one of the ceilings in this rental unit had been extensively damaged during this tenancy. The landlord said that the claims listed in their application constituted a reasonable estimate of the costs involved in repairing items damaged such that the landlord's hired tradespeople could then undertake renovations.

The landlord and Landlord Representative MB also testified that all tenants within this rental building have tenancies which include the provision that was within section 8(b) of the Addendum to this Agreement entered into written evidence by the landlord. This provision requires that if the carpets were professionally cleaned at the beginning of this tenancy that the tenant shall be responsible for professional cleaning of the carpets at the end of the tenancy. The landlord said that the carpets were so badly damaged and in need of cleaning at the end of this tenancy that they needed to be replaced with alternate flooring when this tenancy ended. The landlord also testified that the tradespeople who undertook repairs and upgrades conducted their own cleaning after their work was completed and that it would have been ineffective to have hired professional cleaners to clean the rental unit before work done to repair the extensive damage arising out this tenancy had been completed.

Landlord Representative MB testified that the landlord had no control over how their tradespeople itemized the work they performed in this rental unit, some of which, such as the case with the repair of a damaged light fixture, were included as part of a work order initiated for another rental unit within this building. In this regard, the landlord's representatives asserted that they made every effort to reduce charges that would be directed to the tenant by taking advantage of already scheduled work that their tradespeople were undertaking at this rental building.

Analysis

While I have turned my mind to all the documentary evidence, including multiple photographs, miscellaneous invoice, work orders, and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord’s claim and my findings around each are set out below.

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.

Paragraph 37(2)(a) of the *Act* establishes that when a tenant vacates a rental unit the tenant must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.”

Based on a balance of probabilities, I find extensive photographic evidence, written evidence in the form of the two condition reports and sworn testimony that this rental unit was left in a condition that was not reasonably clean or undamaged except for reasonable wear and tear. In this regard, the tenant made no real attempt to call into question the landlord's evidence that this rental unit was left by the tenant in very poor condition at the end of this tenancy. I find that almost every room of this rental unit was damaged, with large marks on walls and in at least one occasion a door that had a large hole punched through it, which the tenant admitted occurred during their tenancy. Even though the general cleaning of these premises did not occur until two months after this tenancy ended and after extensive repairs and even upgrades had been completed, I give little weight to the tenant's claim that the general cleaning claimed by the landlord was too tardy to enable the landlord to recover general cleaning costs from the tenant. Whenever this cleaning was conducted, I find that the rental unit was left in extremely bad condition by the tenant at the end of this tenancy and that extensive cleaning requiring at least the $385.00 claimed by the landlord was necessary at the end of this tenancy. Based on the photographs taken when this tenancy ended and compared to the report of the condition of the rental unit when this tenancy began, I find that the $385.00 amount claimed by the landlord is if anything a conservative estimate of the cost of cleaning this rental unit given the extremely poor state it was left in by the tenant at the end of this tenancy. For these reasons, I allow the landlord's claim for general suite cleaning in the claimed amount.

I also find that the landlord has provided ample photographic and other evidence that the walls were damaged to the extent that they would have needed to have been repaired before they could be repainted. I note that the landlord has not submitted any claim for repainting the rental unit, which would have been necessary at the landlord's expense based on the lack of painting since this tenancy began over ten years ago. Rather, the landlord has only requested reimbursement for the repairs to the damaged walls before this repainting could even be commenced. As I find that the damage to the walls in this rental unit were far in excess of anything that could be considered reasonable wear and tear, I allow the landlord's claim for $200.00 to repair these damaged walls prior to repainting them. I again consider this to be a more than reasonable estimate of the cost of undertaking this work.

As was noted during the hearing, RTB Policy Guideline 40 establishes the useful life of doors in a rental tenancy to be 20 years. The landlord said that these custom made doors were quite likely original to this building, constructed in or about 1984. Thus, even the landlord admitted that these doors were well past their normal useful life when they were eventually replaced 35 years after they were installed. Although I have given regard to this guidance in RTB Policy Guideline 40, I do accept that these doors were likely of a better quality than would normally be the case in a standard residential tenancy and that there is no reference to any unusual amount of damage to them in the joint move-in condition inspection report. On this basis, I accept that when this tenancy began they still had some value and that at least one of them was so badly damaged during this tenancy that there was a large hole created in the door that could not possibly have been repaired. This damage alone would greatly exceed the $200.00 claimed by the landlord. The actual replacement of the doors in this rental unit, which I find still had some value even by the end of this tenancy, was far in excess of the $200.00 claimed by the landlord. Even though the doors in this rental unit had outlived their normal useful life according to RTB Policy Guideline 40 and were very likely coming due for replacement, I find that the landlord is entitled to the recovery of $100.00 of the expense of replacing them, as they still had some value and were subjected to such unusual damage during the course of this tenancy.

I find that the landlord`s claim of $45.00 for the repair of a damaged light fixture was a very reasonable claim given the landlord`s efforts to combine such work with planned work being conducted by the tradesperson elsewhere in this building. To obtain any work of this type for this amount demonstrates a real willingness of the landlord to mitigate the tenant`s exposure to the landlord`s losses in repairing this element of the rental unit. I allow the landlord`s claim for this item in the requested amount of $45.00.

I have also considered the landlords` evidence with respect to the claim for $166.00 in professional carpet cleaning. While section 8(b) of the Addendum to the Agreement does allow for the landlord to recover the costs of professional carpet cleaning at the end of a tenancy, I do not accept that this provision entitles the landlord to a monetary award for professional carpet cleaning that never actually occurred. This provision is not similar to a liquidated damages clause, which is placed in some Agreements as a genuine pre-estimate by the parties of costs to be incurred by a landlord should a tenancy end before the date identified as the end date for the tenancy. Rather, section 8(b) of the Addendum makes specific reference to professional cleaning that would become necessary if the tenant did not perform this task that had been undertaken prior to the commencement of the tenancy.

In this regard, the landlord maintained that the carpets were so badly damaged that the landlord had no option but to replace the flooring in this rental unit altogether, which the landlord paid $4,845.75 to accomplish. Under such circumstances, it would be unreasonable to expect the landlord to have the carpets professionally cleaned prior to them being torn up and disposed of. In essence, the landlord`s claim for this item is to be given a monetary award of $166.00 in lieu of professional cleaning of the carpets to be applied towards the $4,845.75 spent by the landlord to replace the flooring in this rental unit.

In considering this portion of the landlord`s claim, I note that RTB Policy Guideline 40 establishes the useful life of carpeting within a rental unit to be 10 years. As this tenancy lasted over 10 years and there is no evidence before me that the carpets were replaced during this tenancy, it is quite likely that this element of the rental unit was beyond its useful life when this tenancy ended. Unlike the circumstances involving the doors in this rental unit, the landlord`s representatives provided no testimony that these carpets were in any way unusual, custom designed or exceptional. Rather, I find that these carpets were likely past their useful life and ready for replacement with new flooring that the landlord undertook at considerable cost once this lengthy tenancy ended. Under these circumstances, I find no legislative provision available whereby the landlord would be entitled to partially offset the costs of replacing the flooring in this rental unit by charging the tenant for professional carpet cleaning which never actually occurred and which was unnecessary given that the carpeting was removed shortly after this tenancy ended and discarded. For these reasons, I dismiss the landlord`s claim for professional carpet cleaning without leave to reapply.

As the landlord applied to retain the tenant's security deposit and key deposit within 15 days of the end of this tenancy, I allow the landlord to retain these deposits as a partial offset for the monetary award issued in the landlord's favour.

As the landlord has been successful in this application, I allow the landlord to recover their $100.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover damage that occurred during the course of this tenancy and the filing fee, and to retain the security and key deposits for this tenancy:

Item	Amount

General Suite Cleaning	$385.00
Repair of Damaged Walls	200.00
Repair of Damaged Doors	100.00
Repair of Damaged Light Fixture	45.00
Less Security Deposit	-462.50
Less Key Deposit	-75.00
Filing Fee	100.00
Total Monetary Order	**$292.50**

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: September 24, 2019

Residential Tenancy Branch