Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUALEX-LANDMARK RESIDENCS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with the landlord's application for authorization to make deductions from the tenants' security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord is a corporate entity and was represented by two agents during the hearing. Reference to "landlord" in this decision includes the corporate landlord and its agents.

At the outset of the hearing I confirmed service of hearing documents and evidence upon each other and the Residential Tenancy Branch. The tenant's evidence included digital evidence. The landlord's agents confirmed that they were able to view the content on the digital device. Accordingly, I have considered all of the documentary, digital, and oral evidence provided to me by both parties in making this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to make deductions from the security deposit for damage to the rental unit?

Background and Evidence

The tenancy started on May 15, 2016 and ended on May 14, 2017. The tenants were required to pay rent of $2,650.00 on the first day of every month. The tenants paid a security deposit of $1,325.00.

The parties participated in a move-in and move-out inspection together and the landlord prepared condition inspection reports. The tenants did not agree with the landlord's assessment that the tenants were responsible for damage to the the rental unit during the move-out inspection and this was reflected on the move-out inspection report presented to me.

The landlord has refunded a portion of the security deposit to the tenants and continues to hold $1,188.00 of the security deposit. By way of this application, the landlord seeks authorization to retain this amount for damage to the rental unit.

Below, I have summarized the parties' respective positions with respect to the landlord's damage claim.

1. Damage to fridge door

The landlord submitted that the fridge was new at the start of the tenancy and that at the end of the tenancy the fridge door was damaged by scratches and a dent. The landlord provided a photograph of the damaged fridge door as evidence. The landlord submitted that the tenants were neglectful in ensuring the rental unit was returned in a condition that is consistent with the landlord's high expectations. The landlord explained that the residential property is only two years old and that the rental units are marketed aggressively and the landlord maintains high standards to attract high rents. The landlord was of the position the scratched and dented fridge door is inconsistent with the image the landlord maintains for the property and the door had to be replaced. The landlord originally obtained an estimate to replace the door for 899.85 but was able to negotiate a lower amount with the supplier and ended up paying $777.00 for a new door. The fridge door was replaced before the new tenant moved in on July 1, 2017.

The tenants submit that the scratches and dent in the fridge door were very minor and barely visible. The tenants pointed to their photographic and digital evidence in support of their position. The tenants stated that the photographs and video was taken at 1 foot and from 3 feet from the fridge. The tenants are of the position that the fridge door did not require replacement due to the minor scratches and dent.

The tenants submitted that the landlord's high expectations and standards and aggressive marketing strategy benefits the landlord but unfairly saddles tenants with costs in an effort to keep the rental units looking new when they have in fact been lived in. The tenants are of the position the landlord's claim is unrealistic and does not take into account wear and tear.

As an alternative position, the tenants submitted that the landlord could have replaced the fridge door at a lower cost by acquiring the fridge door from one supplier and having it installed by a different supplier based on the tenant's own research into prices. The tenant provided documentary evidence to demonstrate a lower cost could be achieved by using two different suppliers.

The landlord responded by stating that the landlord worked to reduce the replacement cost as seen by the actual cost coming in less than the estimated cost. The landlord stated that the landlord used the appliance provider that had supplied all of the appliances in the building when it was built and because of that was able to negotiate a lesser cost.

The landlord also stated that attempts were made to repair the damage before deciding to replace it and that the fridge damage was beyond wear and tear.

2. Damage to flooring

The landlord submitted that the flooring in the rental unit is commercial quality vinyl plank. The landlord submitted that the tenants scratched the flooring in several areas of the rental unit, including: the entry, the master bedroom, the second bedroom, kitchen and living room. The landlord provided photographs of the flooring as evidence. The landlord has obtained an estimate to replace the damaged planks in the amount of $411.00. The landlord has not yet had the work done as the current tenant accepted the rental unit in the condition shown to him; however the landlord has the intention to replace the damaged planks in the future to maintain a high quality property.

The tenants submitted that the scratches in the vinyl flooring are minor and caused by wear and tear. The tenants pointed to their photographs, taken from a standing position instead of the landlord's photographs taken while kneeling, in support of their position. The tenants also pointed to emails exchanged between the parties where the damaged areas are described as being much less than what is being put forth by the landlord with this claim. The tenants also submit that the flooring scratches did not impact the landlord's ability to re-rent the unit.

In response, the landlord acknowledged that some scratches were more minor but that some were quite deep. The damage was more easily seen in different light. The landlord looked at another unit that had just been vacated in an effort to gauge normal wear and tear and the subject rental unit had much worse scratches than the other unit.

The landlord considers the scratches in the rental unit to be beyond normal wear and tear.

As with the landlord's claim for damage to the fridge, the tenants maintained that the landlord's high expectations are unrealistic and the tenants should not be held responsible for such high expectations.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Sections 32 and 37 of the Act provide that a tenant must not damage the rental unit and if the rental unit is damaged the tenant must rectify the damage prior to the end of the tenancy. However, these sections of the Act also provide that reasonable wear and tear is not considered damage. If a tenant damages a rental unit and leaves it damaged at the end of the tenancy, the landlord may pursue the tenant for compensation. Accordingly, a landlord may pursue a tenant for compensation where a tenant has damaged a rental unit but may not seek recovery of costs to rectify reasonable wear and tear.

The above described rights and obligations are also provided in Residential Tenancy Branch Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises*. On page 1 of the policy guideline it states, in part:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the

> premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).

In this case, the landlord described having high expectations of its tenants so that its renal units remain in a condition that it may be marketed aggressively for high rents. The tenants objected to this expectation being imposed upon them by the landlord and I find their objection is meritorious. A landlord's business model does not impose an obligation upon the tenant that may be enforced under the *Residential Tenancy Act* unless it is consistent with the expectations imposed upon the tenant by the Act. If a landlord has an expectation of its tenant that exceeds obligations imposed by the Act, the landlord's expectation is not enforceable under the Act and the cost to bring the rental unit to a standard that is higher than that imposed by the Act is that of the landlord, not the tenant. Therefore, the issue determine in this case is the same as for all tenants in the Province regardless of the location of the rental unit, which is: did the tenants damage the rental unit beyond reasonable wear and tear?

Both parties provided photographs of the areas in fridge door and the tenants provided a video as well. In the landlord's photographs, the scratches and dent are quite visible. In the tenants' photographs and video the scratches and dent are much less noticeable. I have pondered the evidence considerably and I appreciate the arguments put forth by both parties have merit; however, I find the tipping point in favour of the landlord is that one does not ordinarily expect to see a dent in the fridge door as part of normal wear and tear. I have also taken into consideration that the fridge door was replaced shortly after the tenancy ended as further evidence that the scratches and dent are beyond wear and tear. Therefore, on the balance of probabilities, I accept the landlord's position that the fridge door was damaged beyond wear and tear and I hold the tenants responsible its replacement.

As for the amount claimed by the landlord and the tenants' position that the landlord could have paid less by using different suppliers, I find I am satisfied that the cost expended by the landlord is within reason. The landlord is not required to everything possible to obtain the lowest cost; rather, the landlord's expectation is that the cost is not unreasonable. I find that approaching the supplier that had supplied the appliances for the building in the past and negotiating a lower actual cost than the estimate demonstrates reasonableness on part of the landlord. Therefore, I grant the landlord's request to recover $777.00 from the tenants for damage to the fridge door and the landlord is authorized to deduct this sum from the tenants' security deposit.

With respect to the landlord's claim for flooring damage, I find the landlord's evidence is less persuasive than that put forth for the fridge. Photographs were provided by both parties. In all of the tenants' photographs the scratches appear to be light superficial surface scratches or indentations. In some photographs provided by the landlord I cannot see damage; however, it would appear that two areas had deeper or numerous scratches: the entry and the master bedroom entrance. I note that in an email sent by the landlord on May 19, 2017 it states, in part:

> "In regards to the flooring, there are only a couple of spots that I would consider beyond wear and tear. I am hoping there is a better solution than taking out those floor boards. That being said, you would not be charged for a full replacement, just the few boards that were damaged."

The estimate for $411.00 is for two boxes of planks, or 24 replacement planks, which appear to be many more than the few boards that may be seen as being damaged being beyond wear and tear. As such, I interpret the landlord's estimate to include replacement of planks that have much lighter scratches which I consider to be wear and tear. Also of consideration is that the current tenant accepted the rental unit as is, which indicates to me that the scratches would not be considered damage by others. Therefore, I find the landlord did not satisfy me that the tenants are responsible for $411.00 for floor damage and I dismiss this portion of the landlord's claim.

I award the landlord recovery of one-half of the filing fee paid for this application, or $50.00, in recognition of the landlord's partial success

In light of all of the above, I authorize the landlord to retain $827.00 ($777.00 + $50.00) of the tenants' security deposit and I order the landlord to refund the balance of $361.00 to the tenants without delay. The tenants are provided a Monetary Order in the amount of $361.00 to ensure payment is made.

Conclusion

The landlord was partially successful in this application and has been authorized to deduct $827.00 from the tenants' security deposit. The landlord has been ordered to pay the tenants the balance of their security deposit in the amount of $361.00 without delay. The tenants are provided a Monetary Order in the amount of $361.00 to serve and enforce upon the landlord if necessary.

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: November 17, 2017

Residential Tenancy Branch