Landlord and Tenant Board

Ontario

Order under Sections 31, 69 and 89
Residential Tenancies Act, 2006

File Numbers: HOL-02144-17
HOT-02146-17

In the matter of: , 300 FRONT STREET W
TORONTO ON M5V0E9

Between: Sanda Jovasevic
Aco Jovasevic
Landlords

and

Tenant

Sanda Jovasevic and Aco Jovasevic (the 'Landlords') applied for an order to terminate the tenancy and evict (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant; and because the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex. The Landlord has also applied for an order for compensation for undue damage the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Tenant then applied for an order determining that the Landlord or the Landlord's agent harassed, obstructed, coerced, threatened or interfered with the Tenant, entered the rental unit illegally, altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household.

These applications were heard together in Toronto on May 30, 2018.

The first-named Landlord above (the ‘Landlord’) and the Tenant’s agent, Maria Mendes (the ‘Tenant’s Agent’), attended the hearing. The Landlords were represented by Anna Vinberg. The Tenant was represented by Marija Pavic.

Determinations:

1. This application involves a condominium apartment. The Landlords allege the Tenant never lived in the rental unit; rather, he turned it into an airbnb unit which was then rented

out dozens if not hundreds of times to travellers as if it was a hotel room. It is the Landlords' position that this activity caused excessive and undue damage to the rental unit which is recoverable under s. 89(1) of the *Residential Tenancies Act, 2006* (the 'Act').

2. The Tenant argues that the Board lacks the jurisdiction to consider the Landlords' claim because the application was amended to include it after the Tenant moved out. In the alternative, the Tenant argues the Landlords' evidence is insufficient to establish that the alleged damage occurred prior to the Tenant returning vacant possession to the Landlords. In the further alternative, the Tenant argues the damage the Landlords claim is as a result of ordinary wear and tear and not undue.

PRELIMINARY ISSUES

3. At the beginning of the hearing I raised a preliminary issue with respect to the Tenant's application. It is electronically signed by the Tenant's Agent and not by the Tenant. In response to my questions I learned the Tenant's Agent is not a licensee under the *Law Society Act* nor does she hold a power of attorney for property for the Tenant.

4. The reason this is an issue is because s. 185 of the Act says:

   (1) An application shall be filed with the Board in the form approved by the Board, shall be accompanied by the prescribed information and **shall be signed by the applicant**.

   (2) An applicant may give written authorization to sign an application to a person representing the applicant under the authority of the *Law Society Act* and, if the applicant does so, the Board may require such representative to file a copy of the authorization.

   [Emphasis added.]

5. Pursuant to s. 59 of Ontario Regulation 516/06, an application that is electronic filed is signed by the applicant by typing his or her name in the space provided.

6. As can be seen from the wording of s. 185, an application must be signed by the applicant or by someone representing the applicant under the authority of the *Law Society Act*. As a valid power of attorney for property gives the attorney the legal authority to deal with the donor's financial affairs, an attorney may also sign an application. Where an application is signed by a lawyer or paralegal the Board may require the representative to file with the Board written authorization signed by the applicant that permits the lawyer or paralegal to act.

7. The clear and obvious purpose of this provision is to ensure that the named applicant is truly the driving force behind the claim being asserted and the Board and the respondent can rest assured the applicant can rightly be held responsible for the conduct of the litigation.

8. This is of particular concern in a case like this where the applicant does not attend the hearing of the application. Where the applicant is present, the applicant can endorse the application on the record and the requirements of the Act and the purpose of the provision are met. Where the applicant is not present, the application can be adjourned so he or she can attend or file and serve an amended application.

9. After inviting submissions on the issue the Tenant's representative did not seek to adjourn the application so it was dismissed for lack of jurisdiction.

10. The second preliminary issue that arose at the beginning of the hearing concerns the Landlords' application brought pursuant to s. 69 of the Act.

11. After some discussion the Landlords sought the consent of the Board to withdraw their request for an order terminating the tenancy. I believe this request is motivated by a desire on the part of the Landlords to leave open the possibility of pursuing prospective rent in another forum. As this application is not an application for arrears of rent, I granted the Landlords' request without prejudice pursuant to s. 200(4) of the Act.

12. The third preliminary issue that was argued before me was actually raised by the Tenant's representative at the very end of the hearing.

13. The Tenant argues that the Board lacks jurisdiction to hear the Tenant's claim made by way of s. 89(1) of the Act because the application was filed after the Tenant ceased to be in possession of the rental unit. This assertion on the part of the Tenant is actually not true but deserves some explanation.

14. Subsection 89(1) says:

    A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex **and the tenant is in possession of the rental unit**.

    [Emphasis added.]

15. This limitation on a landlord's ability to apply to the Board for a monetary remedy is echoed in sections 87 (for rent arrears) and section 90 (for payment of rent due as a result of a misrepresentation of income in a rent-geared-to-income situation). The Board's jurisdiction over such claims is split with that of the regular court system. A landlord can apply to the Board for a monetary remedy while a tenant is still in possession but after the tenant moves out and returns vacant possession to the landlord the claim must be asserted elsewhere.

16. The difficulty with the Tenant's argument is that the Landlords filed this application with the Board on December 4, 2017, well before the Landlords went back into possession at

the end of February, 2018. The application filed on December 4, 2017 includes a claim made pursuant to s. 89(1).

17. I believe the reason this is even an issue is because on March 14, 2018, the Landlords filed a request to amend the application to increase the damage claim from $370.00 to $10,545.53. In other words, what the Tenant is really trying to argue is that the Board should not grant the Landlords' request to amend the application because it was filed with the Board after the Tenant moved out.

18. There is nothing in the Act or the Board's Rules of Practice to support this argument.

19. Pursuant to s. 200(1) an applicant may amend an application to the Board in accordance with the Rules.

20. Rule 16 is the applicable Rule. The relevant parts of Rule 16 read as follows:

    16.1 An applicant who wishes to amend the application before the hearing shall:

    a. file the written request for the amendment and an amended application;

    b. give a copy of the documents to all other parties;

    c. file a certificate of service for the request and the amended application.

    16.2 When an applicant files a request to amend an application, LTB staff will process the amended application and, if necessary, issue a new Notice of Hearing. The decision about whether or not to grant the requested amendment will be made by an LTB Member.

    …

    16.4 The LTB shall decide whether to permit an amendment taking into consideration the following factors:

    a. whether the amendment was requested as soon as the need for it was known, if that was important in the circumstances;

    b. any prejudice a party may experience as a result of the amendment;

    c. whether the amendment is significant enough to warrant any delay that may be caused by the amendment;

    d. whether the amendment is necessary and was requested in good faith; and

    e. any other relevant factors.

21. There is no question here that the Landlords complied with Rule 16.1.

22. Rule 16.2 specifically requires that a Board Member consider and then grant or deny any requested amendments. In practice, where a requested amendment is necessary and relevant, and the respondent receives ample notice, the Board impliedly grants amendments at the beginning of a hearing without explicit comment or inviting further submissions.

23. In fact landlord's applications for termination for arrears of rent are amended every day at the Board as a matter of course when a tenant has moved out after the application was filed. The application is converted from one governed by s. 74 to one filed under s. 87 even though an application cannot be filed under s. 87 once a tenant has gone out of possession.

24. So where a party wishes to challenge a request to amend it should be done at the very beginning of the hearing and not at the end after all of the evidence was heard as was the case here.

25. Nevertheless, even if the Tenant had objected to the amendment request at the start of the hearing, the Landlords' request to amend would still have been granted. This is because the amendment is timely, necessary, and the Tenant has been given ample notice of the additional monetary claims being made.

26. It is necessary because the Landlords say they discovered additional damage after the Landlords went back into possession which was after the application was filed. It was filed and served less than three weeks after the Landlords went back into possession so it was timely. Finally, the request to amend was filed and served on the Tenant two and a half months prior to the hearing before me so it cannot be said the Tenant was unfairly prejudiced as a result of the amendment.

27. I would also observe that if the Board did not grant the amendment requested then because of the common law doctrine of issue estoppel the Landlords almost certainly would have had to withdraw the application before the Board and assert the claim anew in Small Claims Court. That would result in additional costs for both parties and be wasteful of adjudicative and staff resources due to unnecessary duplication.

28. Given all of the above, I am satisfied the Board has the jurisdiction to grant the request to amend and the request is granted. The Board has the jurisdiction to consider the claims asserted.

THE LANDLORDS' CLAIM UNDER S. 89(1)

29. As a result of all of the above, the only real issues before the Board are with respect to the Landlords' damage claim under s. 89(1) of the Act.

30. As can be seen from the wording of the provision, s. 89(1) claims require the Board to explore:

    - The nature of the damage (is it undue or normal wear and tear);

- How the damage occurred (was it a result of negligence or wilful conduct);
- Whether or not the damaged property can reasonably be repaired; and
- The reasonable cost of repair, or replacement where repair is not a reasonable option.

31. Despite this relatively narrow focus for the inquiry on this application, the Landlords were permitted on cross-examination of the Tenant's Agent to ask questions about the tenancy itself in order in part to explore the cause of the alleged damage but also because they take the position the Tenant's Agent is not a credible witness.

Findings of Fact

32. The Landlords bought this condominium unit in 2016. The Landlord says at the time they purchased it the unit was spotless. It had been rented out for the three years prior to their purchase.

33. Immediately after buying the unit the Landlords' real estate agent negotiated the tenancy agreement with the Tenant's real estate agent. The Landlords were not personally involved and did not meet the Tenant. As far as they were aware, the Tenant is an accountant who works for a property management company that shall be referred to here as ZP. The tenancy commenced May 1, 2016.

34. In 2017 the Landlords discovered the rental unit was listed on the airbnb website as a home share available for short term rentals without their knowledge or consent.

35. Airbnb records indicate it was only one of multiple units being offered by a host named ". The Landlords do not know "Sofia". In an investigative article done by CBC News, " " is quoted as saying she works for ZP.

36. The Tenant's Agent says she is a property manager who works for ZP. She says she knows " " but she is not an employee of ZP. Rather, " " is a contractor who does some work with ZP. After the CBC News article appeared, the Tenant's Agent says " " was spoken to about her misrepresentation.

37. The Tenant's Agent also says the Tenant does not work for ZP. Rather he is employed by a gas station that is owned by AN who is the owner of ZP.

38. She says that she started working for ZP in September of 2017 and she never met or spoke with the Tenant until November of 2017. She says she overheard people in her office discussing the Landlords' behaviour towards the Tenant when they discovered the unit was being rented out through airbnb as a home share. She says that at the time the Tenant was in India so she decided to help him out.

39. When the Landlords found out something was going on with the unit they attempted to contact the Tenant and served notice of entry.

40. On November 7, 2017, the Tenant's Agent sent an e-mail to the Landlords describing herself as a property manager with ZP. In the e-mail she states the Tenant is her "client".

41. The Tenant's Agent says that was a mistake. The Tenant was never a client of ZP. She was just helping him out on her own time.

42. The e-mail the Tenant's Agent sent on November 7, 2017 concerns the Landlords' obligation to provide proper notice of termination if they wish to end the tenancy, and then states:

    A representative of [ZP] will be at the above location today, November 7, 2017, between the hours of 7:00pm-8:00pm, for the purpose of inspection of the unit.

43. After that the unit was inspected, the Landlords met the Tenant's Agent, and notices of termination were served on the Tenant.

44. During one of the inspections the Landlords discovered cleaning records. They are the type of dated and signed charts that can often be seen in public washrooms. The charts have a list of cleaning chores on one side, dates at the top of columns that are to be initialed by a cleaner, and checkmarks to indicate the tasks have been performed. The Landlords took photographs of these records that are entered into evidence. The cleaners appear to have been there frequently. At some times it was every couple of days.

45. On December 4, 2017, the Tenant's application was filed by the Board. As stated above, it was not filed by the Tenant, but by the Tenant's Agent. The filing fee was charged to a credit card belonging to AN, the owner of ZP.

46. The Tenant's Agent says this was also a mistake. She is used to filing applications with the Board and charging the filing fee to her employer in the course of her work so she just did what she normally does. But ZP has nothing to do with the tenancy or the Tenant's application. She was just helping the Tenant out as a favour.

47. On the evening of February 26, 2018, the unit was emptied by movers. The Tenant's Agent was present and took photographs which were entered into evidence. She says it is her practice in her job to take photographs after a tenant moves out so she did it this time too, even though she was merely helping the Tenant out on her own time.

48. During the course of the testimony in chief of the Tenant's Agent, the Tenant's representative showed her a set of photographs. She initially stated those photographs were taken by her. She then corrected herself and said the photographs were given to her by the Tenant. The photographs in question include the ones that appear on the airbnb website to advertise the unit.

49. One of the items of damage the Landlords are claiming is with respect to two knobs on the stove top that were broken off.

50. The Tenant's Agent says that when the movers were finished moving out items from the unit and the keys returned to the concierge, the stove knobs were in perfect working order. They were not broken. She says her photographs of the stove show that. That is not true. In her photographs of the stove top, it is possible to see that the top two knobs on the stove top are broken. They were put back in place before the photographs were taken, but the cracks in them where they are broken can still be seen. When this was pointed out to the Tenant's Agent on cross-examination, she persisted in stating the knobs were not broken when vacant possession was returned to the Landlords.

51. Finally, the Landlords filed into evidence photographs downloaded from the web site belonging to ZP. They include photographs of a distinctive lamp and clock that were sitting on a side table in the Tenant's bedroom and a similarly distinctive wall decoration that was hanging above the sofa in the living room. In other words, ZP's own web site shows photographs that appear to have been taken of the rental unit. When this was pointed out to her the Tenant's Agent stated she had no idea why this was the case, she has nothing to do with her employer's web site, but she is aware that it is currently being updated.

52. Given all of the above, I am satisfied that the Tenant's Agent is not a credible witness. Her testimony about the broken stove top knobs is demonstrably untrue. The e-mail of November 7, 2017, the filing of the Tenant's application and the manner in which the filing fee was paid, the behaviour of the Tenant's Agent in attending at the unit for the Landlords' inspection and for the move, and the photographs entered into evidence, all support the conclusion that the Tenant's Agent is not telling the truth when she says she did all of it as a favour for the Tenant.

53. As a result, where the testimony of the Tenant's Agent with respect to the damage to the rental unit conflicts with the evidence and testimony of the Landlord, I accept the Landlords' evidence over that of the Tenant. This means that I do not accept the testimony of the Tenant's Agent to the effect that some of the damage claimed by the Landlords did not exist at the time the Tenant's Agent returned the key to the concierge.

54. The specific items of damage the Landlords claim in the application concern: the carpeting; the hardwood flooring; the window blinds; the silicone in the bathroom shower enclosure; the shower door; the condition of painted surfaces; the stove knobs; and the lock for the door of the rental unit.

55. With respect to the carpeting, the evidence establishes the carpet in the bedroom was left badly stained. When the Landlords regained possession they could not afford to replace the carpets and needed to mitigate their damages by re-renting the unit as quickly as they could. So they had the carpets professionally cleaned but the cleaning did not remove the stains.

56. In the main living area of the unit there is engineered hardwood flooring. Photographs entered into evidence show marks and damage consistent with heavy items being dragged. There is also an area that has some sort of build-up that cannot be removed.

57. Vertical blinds hang in the windows throughout the unit that were fixtures rented with the unit. A number of the slats were torn or otherwise damaged so that they could not be re-hung.

58. The silicone sealant in the walk in shower was so significantly stained with mildew or some other type of mould that it could not be removed with regular cleaning. One of the reviews of the unit on the airbnb website complains of the mould.

59. The shower door was off its hinges or otherwise not working properly.

60. A number of the photographs entered into evidence show that in various places throughout the unit the walls and other painted surfaces were chipped, dented, or otherwise marked.

61. Two of the four knobs for the burners on the stove top were broken.

62. The Landlords had the condominium corporation change the lock to the rental unit out of concern that some of the airbnb guests or other individuals might have kept keys.

Analysis

63. The Tenant argues that the damage the Landlords complain of is in the nature of normal wear and tear and therefore is not “undue”. It is his submission that over time and from normal non-negligent use, painted finishes get dented and marked, floors get scuffed, carpets get worn and things get spilled, the silicone in shower enclosures develops mildew, doors come off hinges, and vertical blind slats fall out.

64. The Landlords argue that although some of the damage is akin to normal wear and tear in kind, the degree or extent of the damage is excessive and directly related to the negligent or wilful behaviour of the Tenant in permitting the unit to be used as an airbnb home share without the Landlords’ knowledge or consent.

65. The use of the phrase “undue damage” indicates that some damage to a rental unit is expected with everyday use. I would agree with the Tenant that normal wear and tear is not undue and the Tenant cannot be held liable to the Landlord for it.

66. That being said, I agree with the Landlord that much of what is claimed here cannot be said to be the result of normal, everyday use. Further, some of the damage is clearly associated with careless or negligent behaviour or wilfulness.

67. For example, the two broken knobs on the stove top did not get broken on their own. The damage is consistent only with someone deliberately applying inappropriate force or carelessly misapplying force because he or she did not know how to turn the knobs on or off properly. Absent evidence from the Tenant as to how the knobs were actually damaged, I am satisfied that the only reasonable explanation of the cause of the damage is wilful or negligent conduct by the Tenant, an occupant or a guest.

68. Although it is common for people to accidentally spill things on a carpet, particularly in a dining room, it is still indicative of carelessness. And when it does happen, the reasonably prudent tenant makes efforts to immediately clean it up. That is what spot cleaning products are for. But the typical user of an airbnb unit is not in the same position as the reasonably prudent tenant. For an airbnb user, the unit is akin to a hotel room. I would not expect the typical airbnb consumer to travel with cleaning products and no evidence was led here that there were products in the unit available for a traveller's use.

69. The photographs of the bedroom carpet taken by both parties show heavy staining that is consistent with multiple careless spills of liquid that were not tended to or spot cleaned in a timely manner. Although I do not have photographs of the carpet after it was cleaned I have no reason to doubt the Landlord's testimony that the carpets remain stained after professional cleaning.

70. In other words, although it is normal for a landlord to have to vacuum and clean carpets on turnover, it is not normal for the carpets to be this badly stained after a tenancy of less than two years. The damage to the carpets is excessive and therefore, I find it is undue. It is also consistent with behaviour on the part of the Tenant's guests that can only be described as careless; there were repeated spills of liquids not properly attended to or spot cleaned in a timely and reasonable manner.

71. The same analysis is equally applicable to the wooden floors, the silicone in the shower enclosure, the vertical blinds, and the painted surfaces.

72. The pictures of the wooden flooring are consistent with heavy objects like suitcases being carelessly dragged across them. Some sort of build-up is visible in pictures entered into evidence consistent with someone spilling some sort of glue or plasticized product that then set and hardened.

73. Mildew grows on silicone in showers but it takes years to get to the state this shower was in unless it is not cleaned with bleach based cleaners or there is a serious ventilation problem. No evidence was led of a ventilation problem in this bathroom so I am satisfied that the cleaning done during the tenancy was done in a negligent manner because proper cleaning products were not used.

74. The pictures of the blinds show multiple individual slats were damaged and could not be used. Most of the damage is to the top of the slat where the piece connects with the frame but at least one is split at the bottom. In the closed position, the blinds show clear gaps where pieces are missing.

75. Again, with normal use, individual vertical blind slats will get damaged from opening and closing. Again, the degree of the damage will increase with the carelessness of the user. The number of broken and damaged slats visible in the Landlords' photographs is excessive given a tenancy of less than two years and is more consistent with repeated instances of careless and negligent use.

76. The photographs show chips in the painted finishes, scuff marks, and stains. Some of that is normal and typical but the degree and amount of those kinds of marks as shown in

the photographs supports the conclusion that the Tenant's airbnb guests were repeatedly less than careful about moving around the unit.

77. So with respect to the wooden floors, the silicone in the shower enclosure, the blinds and the painted surfaces in the unit, I am satisfied that some if not all of the damage is undue and caused in part by carelessness or negligent use or neglect.

78. With respect to the shower door, no evidence was led as to how the door came off its hinges and it was easily repaired. Given the nature of how such doors work, and my experience of like similar cases before the Board, this kind of problem is consistent with both normal use and negligent use. As a result, absent additional evidence, I am not prepared to make a finding that the damage was excessive or out of the ordinary or more consistent with negligence then ordinary usage. So the claim with respect to the shower door must be dismissed. The evidence is insufficient to establish the damage is undue.

79. The real difficulty that arises here is with respect to assessing the quantum the Landlords are entitled to for the reasonable cost of repair or replacement where repair is not reasonable.

80. The task is easiest with respect to the knobs for the stove and the carpet.

81. According to the invoices filed, the Landlords were able to purchase replacement knobs on-line at $25.80 each plus shipping and HST. For some unknown reason the invoice shows the Landlords purchased three although the evidence indicates only two were broken. This price is clearly a reasonable amount for replacement knobs so I am satisfied the Landlords are entitled to an order for two-thirds of the invoice filed or $74.83. The evidence is unclear what if any amount was incurred for labour costs related to replacing the knobs so no amount shall be ordered for labour.

82. As stated above, I accept the Landlords' evidence that the carpet cannot in fact be repaired as the stains cannot be removed. As a result, the Landlords are entitled to the reasonable cost the Landlords will incur for replacing the carpet. The fact the Landlords have not yet replaced the carpet because they could not afford it but still managed to re-rent the unit does not negate their entitlement to that amount.

83. I would observe at this point that the wording of s. 89(1) indicates the Landlords are not entitled to both the reasonable cost of repair and the reasonable cost of replacement. So the Landlords are not entitled to an order for the cost of cleaning the carpet.

84. The Landlords provided a quote from their contractor for future replacement of the carpet of $2,400.00 plus HST of 13%. No evidence was led to suggest this is an unreasonable amount, and based on my experience of like claims I am not prepared to say that it is so an order shall issue requiring the Tenant to pay to the Landlord $2,431.20 for replacing the carpet.

85. The Landlords paid $550.00 plus HST to remove and replace the silicone in the shower enclosure.

86. As stated above, some staining of the silicone would be expecting from normal prudent use and cleaning. In other words, some of the damage is undue and some is not. As the Tenant can only be held responsible for the part that is undue some apportionment of responsibility for the cost of replacing the silicone is appropriate.

87. Given the photographs filed and my experience of like similar cases before the Board I am of the view that about 80% of the mildew damage caused is attributable to the Tenant's behaviour in failing to use appropriate cleaning products. As a result, the Tenant shall be ordered to pay to the Landlords 80% of the cost of replacing the silicone or $445.72.

88. A similar apportionment exercise would be appropriate with respect to the damage to the floors, the painted surfaces, and the blinds.

89. I should observe at this point that the parties provided me with dozens of photographs of the state of the unit at the end of the tenancy. Without them it would have been impossible for the Board to assess how much of the damage can be attributed to normal wear and tear and how much is excessive or undue.

90. Having examined those pictures carefully, and taking into account my experience of like similar cases, it seems to me that 80% of the damage to the flooring is undue, as is 40% of the damage to the painted surfaces and 90% of the damage to the blinds.

91. The vertical blinds were repaired at a cost of $450.00 plus HST and I am satisfied that is a reasonable amount. So an order will issue requiring the Tenant to pay to the Landlord $364.68 for the undue damage to the blinds.

92. With respect to the damage to the painted surfaces, the Landlord paid $550.00 plus HST, but that amount included an unknown amount for "adjust kitchen hardware etc" and no evidence was led as to how much of the total was with respect to the painted surfaces and how much was not. As a result, it is not possible to assess how much of that cost is attributable to the undue damage caused by the negligent conduct of the Tenant, an occupant or a guest.

93. That being said, I am satisfied some costs were incurred by the Landlords as a result of undue damage to the painted surfaces, so in the absence of sufficient evidence that would enable the Board to quantify it, it would be appropriate to award a nominal amount which I fix at $25.00.

94. With respect to the engineered wood flooring the Landlords obtained a quote "to repair damaged hardwood floor in the living room, or to replace if necessary" for $1,100.00 plus HST. Given my experience of the cost to replace flooring of this kind this is a reasonable amount, so the Tenant will be ordered to pay to the Landlords $891.44 which represents 80% of the cost the Landlords will incur to repair the flooring.

95. That leaves the claim for compensation with respect to the changing of the lock.

96. Although I can understand why the Landlords changed the lock and can appreciate it was probably prudent to do so, there was nothing wrong with the lock. It was not damaged or in a state of disrepair. Subsection 89(1) only addresses actual damage to the rental unit or residential complex. This amount is not recoverable under the Act.

Conclusion

97. Finally, the Landlords incurred costs of $175.00 for filing the application and are entitled to reimbursement of those costs.

98. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenant's application is dismissed.

2. The Landlords' application filed pursuant to s. 69 is dismissed without prejudice.

3. The Tenant shall pay to the Landlords $4,232.87 for compensation for undue damage.

4. The Tenant shall also pay to the Landlords $175.00 for the cost of filing the application.

5. The total amount the Tenant owes the Landlords under this order is $4,407.87.

6. If the Tenant does not pay the Landlords the full amount owing on or before August 4, 2018, the Tenant will start to owe interest. This will be simple interest calculated from August 5, 2018 at 3.00% annually on the balance outstanding.

July 24, 2018
Date Issued

____
Ruth Carey
Vice Chair, Landlord and Tenant Board

Toronto South-RO
79 St. Clair Avenue East, Suite 212, 2nd Floor
Toronto ON M4T1M6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.