Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for: damage to the rental unit; unpaid rent or utilities; to keep all of the Tenants' security and pet damage deposits; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and to recover the filing fee.

An agent for the Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence in advance of the hearing. There was no appearance by the Tenants during the one hour duration of the hearing and there was no submission of written evidence by the Tenants prior to the hearing. As a result, I focused my attention to the service of the documents by the Landlord.

The Landlord's agent testified that both Tenants were served individually with a copy of the Application and the Notice of Hearing documents by registered mail on April 16, 2014, pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). Copies of the Canada Post tracking receipts were provided as evidence for this method of service and the Landlord's agent testified that the Canada Post website indicates the documents were received and signed for by the Tenants on April 17, 2014. Based on the above evidence, I find that the Landlord served the Tenants with the documents for this hearing in accordance with the Act.

Preliminary Issues

The Landlord had made the Application for a monetary claim in the amount of $1,307.91. This was based on estimated costs for utilities, repairs and cleaning. After the Application was made, the Landlord was able to ascertain and verify the exact losses which resulted in a larger claim amount of $1,631.13. The written evidence supporting this claim amount was submitted as evidence prior to the hearing; however,

the Landlord did not amend the Application to increase the amount being claimed and relied instead on the evidence provided for this hearing to claim the increased amount.

Rule 2.5 of the Rules of Procedure provides for the procedure an applicant must follow when they intend to adjust or amend their Application. As the Landlord failed to amend the Application and did not serve the Tenant with an amended copy of the Application in accordance with Rule 2.5 in order to put the Tenant on notice of the increased monetary claim, I find that providing the Tenant with the written evidence in relation to the damages to the rental suite is not sufficient notice and would not be in the accordance with the principles of natural and fair justice.

As a result, I have only considered the Landlord's Application for the original amount claimed of $1,307.91. The hearing continued and the Landlord's agent presented the undisputed testimony and evidence as follows.

Issue(s) to be Decided

- Is the Landlord entitled to costs associated with damages to the rental suite, cleaning costs and unpaid utilities?
- Is the Landlord entitled to keep all of the Tenants' pet damage and security deposits in partial or full satisfaction of the monetary claim?

Background and Evidence

The Landlord's agent testified that this tenancy began on January 1, 2013 for a fixed term of 12 months after which it continued on a month to month basis. The Tenants paid the Landlord a pet damage and a security deposit of $575.00 each on December 11, 2012; the Landlord's agent confirmed that the Landlord still retains these deposits for a total amount of $1,150.00. Rent was payable by the Tenants in the amount of $1,150.00 on the first day of each month. The Landlord completed a move in Condition Inspection Report (the "CIR") on December 21, 2012 with the Tenants.

The Landlord's agent testified that the Tenants provided the Landlord with written notice on February 28, 2014 to end the tenancy for the end of March, 2014; even though the Tenants did not leave until April 3, 2014. A move out CIR was completed by the Landlord with the male Tenant on April 3, 2014. A copy of the CIR was provided in written evidence by the Landlord.

During the hearing, the Landlord presented extensive evidence of unpaid utilities by the Tenants, damages caused by the Tenants, and cleaning of the rental unit and carpets

not carried out by the Tenants. These was further supported by written evidence in the form of utility bills, photographic evidence, invoices verifying the losses being claimed and the move in and move out CIR.

However, at the end of the hearing, the Landlord's agent brought it to my attention that the Tenants had signed the CIR authorizing the Landlord to keep the Tenants' security and pet damage deposits. On examination of the CIR, it shows that the move in and move out CIR were both signed by one of the Tenants. The CIR contains a section titled 'Security Deposit Statement' which provides a breakdown of the costs the Landlord sought to claim from the Tenants during the inspection. At the end of this section the text states "I agree with the above amounts noted above and authorize the deduction of the Balance due Landlord from my security and/or pet damage deposits". The breakdown shows that the Landlord seeks a total amount of $1,342.87 from the Tenants and that, after deducting the full deposit amount, this leaves a balance payable by the Tenants of $192.87 and a zero balance due back to the Tenants.

The Landlord's agent testified that the male Tenant attended the move out condition inspection and signed the move out CIR agreeing to the damages noted on the move out CIR as well as the deductions from the deposits. The Landlord's agent testified that shortly after she got a message from the female Tenant stating that she had tricked the male Tenant into signing the CIR and that she had an obligation to explain to him what he was signing.

The Landlord's agent also testified that the Tenant explained that to her that she should not have to pay for the damages to the rental suite because the Landlord had sold the property which had been purchased as is; in addition the Tenant also alleged to the Landlord's agent that she had dealt with the previous renter's security deposit differently than she had done in this tenancy.

Analysis

Firstly, I find that the Landlord complied with Section 38(1) of the Act by making the Application on April 14, 2014 after the tenancy ended, to keep the Tenant's security deposit within the time limits stipulated by the Act.

While I have not documented the extensive nature of the evidence provided by the Landlord during the hearing in regards to the monetary claim, I explained to the Landlord's agent the provisions of Section 38(4) (a) of the Act which states "A landlord may retain an amount from the security deposit **or** pet damage deposit if at the end of

the tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant".

As a result, the Landlord's agent considered the balance being claimed for a potential deduction of the Tenants' deposits and decided that she was agreeable to keep the Tenant's deposits in full satisfaction of the Landlord's monetary claim. Therefore, in my analysis, I find that the Tenant did provide written consent to the Landlord's agent to keep all of the pet damage and security deposits as evidenced on the CIR. The Tenants failed to appear for the hearing in order to rebut and refute this evidence.

Furthermore, I find that the Landlord only requires the written consent of **one** Co-tenant to make this deduction. In addition, there is no requirement for the Landlord to advise, inform or advocate on the signing of documents. A party signing formal legal documents does so at their own risk and has the option of reading, understanding and examining the documents before signing them.

The fact that the Landlord sells a property after a tenancy ends does not have any bearing on a Tenant's requirement to comply with Section 37(2) of the Act which requires the Tenant to leave the rental suite reasonably clean and undamaged at the end of a tenancy. Each tenancy is treated as an individual case and how a Landlord conducts their business and actions in one case has no bearing on the particular tenancy being decided upon during a hearing.

Conclusion

For the reasons set out above, I allow the Landlord to keep the Tenants' deposits in the amount of **$1,150.00 in full satisfaction** of the Landlord's claim.

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: August 15, 2014

Residential Tenancy Branch