Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding UNIVERSITY PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with three Applications for Dispute Resolutions that were joined together. The landlord had applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement and return of the security deposit. The named 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

Preliminary Issues – *Service of Landlord's Application and evidence*

The landlord applied for monetary compensation against seven co-tenants. Upon hearing from the parties, I was satisfied the landlord sent seven hearing packages to the co-tenants using the mailing address for one co-tenant (referred to by initials SE) and that the tenants received copies of the landlord's Application for Dispute Resolution from SE. Although this method of service may not comply with the requirements of section 89(1) of the Act, I was satisfied all of the named tenants were in receipt of the landlord's Application for Dispute Resolution and had ample opportunity to respond to the Application. Therefore, I found SE sufficiently served and deemed the remaining six co-tenants to be served with the landlord's Application for Dispute Resolution under the authority afforded me under section 71(2)(c) of the Act.

On December 11, 2013 the Residential Tenancy Branch received a 62 page evidence package and written submission from the landlord. The landlord acknowledged that his written submissions were not provided to the tenants and I did not consider them further. The tenants also raised issues with respect service of the landlord's evidence. AS confirmed receiving documentation form the landlord that appeared to be evidence he received from the other tenants. The other six co-tenants denied receiving any evidence from the landlord. The landlord testified that he served the six co-tenants with

his evidence via registered mail sent on December 6, 2013 to a forwarding address he received from them on September 16, 2013. The co-tenants testified that they checked with the people living at that address and no mail was waiting for them. The landlord submitted that the registered mail remains waiting for pick up at the post office.

Considering the above, I found it was unclear as to what the landlord had sent to the tenants and I was unsatisfied that the tenants were served with all of the same documents provided to the Residential Tenancy Branch by the landlord. Further, the Rules of Procedure provide that an applicant is to submit and serve all evidence available at the time of filing their Application for Dispute Resolution. I find the landlord failed to comply with this Rule. Therefore, I excluded the landlord's written submissions and documentary evidence from further consideration.

The landlord indicated that he was prepared to point to the tenants' documentary evidence in making his submissions and I indicated that this would be permissible. I also informed the parties that the landlord would be provided the opportunity to make his submissions orally during the hearing.

Preliminary Issue – *Jurisdiction*

The landlord questioned whether the Act applies to this dispute as he was of the position the tenants failed to fulfill terms of the tenancy agreement and never occupied the rental unit.

The Act provides that the Act applies to all residential tenancy agreements, rental units and residential property between a landlord and tenant except for specifically excluded living accommodation provided for under section 4 of the Act. This rental unit did not meet any of the listed exemptions. The Act provides that the rights and obligations of a landlord and tenant take effect from the time the tenancy agreement is entered into, whether or not the tenants ever occupy the rental unit. The Act provides that a security deposit may not be collected unless there is formation of a tenancy agreement.

The landlord acknowledged that a document entitled "Residential Tenancy Agreement" was executed in March 2013 for a tenancy set to commence September 1, 2013 and that a security deposit of $4,000.00 was collected from the tenants in March 2013.

The tenants denied violating terms of the tenancy agreement and submitted that the landlord did not provide them with possession of the unit despite their attendance at the rental unit in the morning hours of September 1, 2013 with a rent cheque and

identification in hand. Regardless, the Act provides various remedies where a party breaches a term of a tenancy agreement, as determined by the nature of the breach.

In light of the above, I found that the Act applies to the tenancy agreement formed between the parties and that I have jurisdiction to resolve this dispute. As such, I heard the landlord's Application for Dispute Resolution during this hearing date and this decision deals with the landlord's claims against the tenants and whether the landlords established an entitlement to retain the security deposit.

Preliminary Issues – *Tenant's Application (Tenant AS)*

One co-tenant (referred to by initials AS) applied for compensation for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. I was satisfied AS served her Application for Dispute Resolution and evidence upon the landlord as the landlord acknowledged receiving her hearing documents.

The landlord's agent pointed out that AS identified both him, personally, and the corporate landlord as landlords in filing her Application for Dispute Resolution. The landlord was of the position that it was unfair to name two parties as the landlord. The landlord stated that he personally was holding the tenants' security deposit and that funds had not been forwarded by him to the corporate landlord. The landlord also stated that he had not been paid commission by the corporate landlord for his part in securing this tenancy.

Having heard the landlord's agent was personally holding the security deposit I was satisfied the landlord's agent met the definition of "landlord" under the Act and it is permissible to name him personally. As the corporate landlord was named on the tenancy agreement and on the landlord's Application for Dispute Resolution the corporate landlord's name remained as a named party. As I informed the parties during the hearing, it is upon the corporate landlord and the landlord's agent to apportion any liability related to this tenancy among themselves.

Due to hearing time constraints and the multiple preliminary issues, there was insufficient time to hear AS's application and it was adjourned. Notices of Adjourned Hearing shall be sent to the named landlords and AS under separate cover. A separate decision will be issued to AS and the landlord once the hearing for AS's application is concluded.

Preliminary Issues – Tenant's Application (remaining six co-tenants)

The remaining six co-tenants filed an application seeking compensation for damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. I determined that the tenants' agent, who filed the application on their behalf, had altered the Application for Dispute Resolution sent to the landlord so as to conceal the tenants' service address. I found that the alteration of the landlord's copy of their application significant and resulted in the tenants failing to serve the landlord with a "copy" of their Application for Dispute Resolution as is required by section 59 of the Act. Therefore, I refused to accept or proceed with their Application and dismissed it with leave to reapply.

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Issue(s) to be Decided

1. Has the landlord established an entitlement to receive compensation for damage or loss under the Act, regulations or tenancy agreement?
2. Disposition of the security deposit.

Background and Evidence

The parties executed a written tenancy agreement on March 13, 2013 for a tenancy set to commence September 1, 2013 for a fixed term ending on August 28, 2014. The tenancy agreement provides for monthly rent of $3,995.00 payable on the 1st day of every month. The landlord collected from the tenants $1,000.00 on March 9, 2013 and $3,000.00 on March 13, 2013 as a "deposit".

It was undisputed that the tenants were not provided occupation of the rental unit; however, the parties pointed each other as the reason for this. The landlord claimed that the tenants indicated that they would not be providing the landlord with the identification that was required of them in a term of tenancy agreement and had not provided proof of insurance. The tenants claimed they arrived at the residential property on September 1, 2013 with identification and a rent cheque in hand but that the landlord did not attend the property. Further, the unit appeared to be occupied. The landlord responded by stating that the landlord had to mitigate its losses by securing new tenants but that those tenants only had a few possessions in the rental unit that could have been removed.

On September 10, 2013 tenant AS sent the landlord a forwarding address and on September 13, 2013 filed an Application for Dispute Resolution. In filing the Application

for Dispute Resolution the landlord indicated it was seeking compensation of $4,865.00 for “re-rental expenses”. During the hearing, the landlord submitted that the unit was re-rented for a lesser monthly rent and that the landlord seeks to recover that loss of rent from the tenants. The landlord stated that he had a ledger to show how much the amount of rent collected from the current tenants.

I noted that the amount of the “deposit” collected by the landlord violates the limitations on deposits imposed by the Act. The landlord stated that he collected a pet damage deposit from the tenants in the event they acquired a pet during the tenancy. I noted that the tenancy agreement the tenants are expressly prohibited from having pets.

I also noted that the tenancy agreement contained several other terms that violate the limitations and requirements for tenancy agreements under the Act. The landlord responded by stating he was an inexperienced landlord at the time this agreement was created but that current tenancy agreements are compliant.

Analysis

Upon consideration of the evidence before me, I provide the following findings and reasons with respect to the landlord’s Application for Dispute Resolution.

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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The landlord submitted that the landlord has suffered a loss of rent since the renal unit was re-rented for a lesser amount starting September 1, 2013. I found the landlord’s submission that he had a ledger to establish the loss of rent to be insufficient in the absence of other evidence. A ledger is merely a recording or accounting prepared by the landlord. To establish the amount of rent payable by the current tenants I find it reasonable to expect that the landlord would have provided a copy of the current tenant’s tenancy agreement; the landlord’s banking records, or other such evidence to

substantiate the amounts appearing on a ledger. Therefore, I find there is insufficient evidence to verify the amount of rental loss claimed by the landlord.

Although the landlord had claimed for recovery of "re-rental expenses" on the application, the landlord did not provide a detailed description or evidence with respect to that claim and it remained unclear to me as what was included in that claim. Therefore, I find that claim unsupported and I make no award for "re-rental expenses".

In light of the above, I find the landlord failed to establish the amount of the loss suffered, if any, as a result of actions of the tenants. Therefore, I dismiss the landlord's claims against the tenants in its entirety.

As provided in Residential Tenancy Policy Guideline 17: *Security Deposits and Set-Off*, where a landlord claims against a security deposit and/or pet damage deposit and the claims are dismissed, the Arbitrator shall order the return of the deposit to the tenants. Accordingly, I order the landlord to return the security deposit to the tenants without further delay. Provided to the tenants with this decision is a Monetary Order in the amount of $4,000.00 to serve upon the landlord(s) and enforce as necessary.

Conclusion

The landlord's claims against the tenants have been dismissed. The landlord has been ordered to return the security deposit to the tenants without further delay. The tenants have been provided a Monetary Order in the amount of $4,000.00 to serve and enforce as necessary.

Tenant AS's application has been adjourned and a separate decision shall be issued once that proceeding is concluded. Notices of Adjourned Hearing shall be sent to the landlords and AS under separate cover.

The application filed by the remaining co-tenants was dismissed with leave to reapply.

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: January 17, 2014

Residential Tenancy Branch