Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MND MNSD FF
MNDC MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on October 15, 2013, seeking a Monetary Order for: damage to the unit, site or property; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for her application.

The Tenants filed seeking a Monetary Order for the return of double their deposit plus recovery of their filing fee.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to a Monetary Order?
2. Are the Tenants entitled to a Monetary Order?

Background and Evidence

The undisputed facts are that T.D. and L.H. entered into a fixed term tenancy as co-tenants. The tenancy began on March 15, 2012 and was switched to a month to month tenancy after March 15, 2013. Rent was payable on the first of each month in the

amount of $1,800.00 and at the end of February, 2012, the Tenants paid $900.00 as the security deposit plus $900.00 as the pet deposit. Both parties attended the move-in inspection and completed the condition inspection report form on March 1, 2012. The tenancy was ended after the Tenants provided proper written notice on August 28, 2013. Both parties attended the move-out inspection completing the inspection report form on September 29, 2013. The Tenants remained in possession of the unit until the morning of September 30, 2013.

The Landlord testified and confirmed that she altered the tenancy agreement, after the end of the tenancy when she recorded that a $500.00 security deposit and $500.00 pet deposit had been paid. She stated that she did this for her records as she had already returned $400.00 of the security and $400.00 of the pet deposits to the other Tenant L.H. She confirmed that C.W. moved in as a Tenant sometime in the spring of 2013.

The Landlord stated that she has no previous records for this property from prior to her being hired as property manager in January 2012. She does not know the age of the house and does not know when it was last painted. She argued that the Tenants used the wrong product to fill the holes that were left in the walls which has caused her to have to paint each room at a cost of $1,404.58, as support by the invoice she provided in evidence. She said she told the Tenants to purchase “Polly filler that goes on pink and dries white” but they purchased spackle and spread it all over the walls.

The Tenant testified that they purchased the product that they were told to get and that they filled “all” the holes in the walls to the best of their ability. They were not vindictive with the manner in which they filled the holes and they made sure to fill all the holes, even the ones that were there before they moved in. They pointed to the condition inspection report form and argued that the move in report clearly shows existing holes in the walls. They also argued that the Landlord altered this document by adding the words “holes to be filled” in numerous places on the move-out side, after they signed it.

The Tenants argued that the Landlord did not provide them with the move-in report within the required 7 days and that they had to travel to another city to pick it up. Also they noted that their evidence supports that the move out report was not sent to them within the required time frame as it was not sent in the mail until October 16, 2013, as supported by the picture of the envelope they provided in their evidence.

The Tenants stated that they were never told they could not hang up a baby gate or shelves and argued that their tenancy agreement does not stipulate they cannot hang up pictures or shelves either. They argued that the house had numerous different colors of paint in each room. They pointed to the painting invoice provided by the Landlord and argued that it states that the painter was not able to match the paint to do touch up painting so he had to purchase new paint.

In closing the Tenants testified that they received the move-out condition inspection report form in the same registered mail enveloped as the Landlord’s application, which was not mailed until October 16, 2013. They did not receive the pet deposit refund until

October 17, 2013 when it arrived by regular mail and that cheque was dated October 12, 2013.

The Landlord denies altering the move-out condition inspection report form after it was signed and argued that she was told that she met the required deadline for submitting the condition inspection report form to the Service B.C. office.

Analysis

Landlord's Claim

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline # 40* which provides that interior painting has the normal useful life of four years.

Residential Tenancy Policy Guideline # 1 provides that tenants may put up pictures, mirrors, or hangings, in their unit and if a tenant follows reasonable instructions for hanging and removing the items, it is not considered damage. That being said, a tenant would be responsible for all deliberate or negligent damage to the walls.

Upon review of the evidence before I find there to be insufficient evidence to prove the Tenants caused deliberate or negligent damage to the walls. Notwithstanding the Landlord's argument that the Tenant's did not use the product called "Polly Filler" as she requested; there is insufficient evidence to prove that the Tenants used an incorrect product when patching the holes in the walls. That is because the product they used is a product commonly used to patch drywall.

In the absence of any evidence to prove when the rental unit was painted prior to the onset of this tenancy, I find the Landlord has provided insufficient evidence to prove a claim for damages. Accordingly, I hereby dismiss the Landlord's claim, without leave to reapply.

The Landlord has not been successful with their application; therefore I decline to award recovery of the filing fee.

Tenants' claim

The *Residential Tenancy Policy Guideline # 13* defines co-tenants as two or more tenants who rent the same property under the same tenancy agreement. Co-tenants have equal rights under the tenancy and are jointly and severally responsible for any debts or damages relating to the tenancy. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord or owed to them. The Landlord cannot singularly decide that she will separate pet or security deposits.

Section 36 (2)(C) of the Act stipulates that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is ***extinguished*** if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations [emphasis added].

Section 18(1) of the Regulations provides that the landlord must give the tenant a copy of the signed condition inspection report

(a) of an inspection made under section 23 of the Act, promptly and in any event within 7 days after the condition inspection is completed, and

(b) of an inspection made under section 35 of the Act, promptly and in any event within 15 days after the later of

(i) the date the condition inspection is completed, and

(ii) the date the landlord receives the tenant's forwarding address in writing.

Documents served by registered mail are deemed to be received five days after they are mailed, pursuant to section 90 of the Act.

In this case the Tenants provided their forwarding address to the Landlord on September 29, 2013, the tenancy ended September 30, 2013, and the Landlord mailed the condition inspection report form to the Tenants on October 16, 2013; sixteen days after the tenancy ended.

Based on the aforementioned, I find the Landlord did not give the Tenant a copy of the move-out inspection reports in accordance with Section 18 of the Regulations, as listed above. Accordingly, The Landlord has ***extinguished or lost*** her right to claim the security deposit for damage to the property.

The Landlord was therefore required to return the security deposit to the Tenant within 15 days of the later of the two of the tenancy ending and having received the Tenant's forwarding address in writing, in accordance with Section 38(1) of the Act. Accordingly, the Landlord was required to return the full $900.00 security deposit no later than October 15, 2013. The Landlord returned only $400.00 of the deposit.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord must pay the tenant double the security deposit.

Based on the aforementioned I find the Tenant has met the burden of proof to establish her claim and I award her double the security deposit plus interest in the amount of **$1,400.00** (2 x $900.00 + $0.00 interest - $400.00 previous returned).

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee

Although there is evidence that C.W. moved into the rental unit in the spring of 2013, there is insufficient evidence to prove he was added to the tenancy agreement. Therefore, I find he was an occupant and it not a party to this dispute. Accordingly, the monetary order will be issued in only T.D.'s name.

Conclusion

I HEREBY dismiss the Landlord's claim, without leave to reapply.

The Tenant has been awarded a Monetary Order in the amount of **$1,450.00** ($1,400.00 + $50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order 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: January 14, 2014

Residential Tenancy Branch