Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Preliminary Issues

Upon review of the Landlord's application for dispute resolution the Landlord listed in the Details of the Dispute that the Tenant gave late notice and the *"Landlord is seeking November 2013 rent plus estimated cleaning charges and garbage removal"".*

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as she clearly indicated her intention of seeking to recover the payment for rent for a period after the Tenant gave notice to end the tenancy. Therefore, I amend the application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

The Landlord submitted documentary evidence which indicates each Tenant was served with copies of the Landlord's application for dispute resolution, Notice of dispute resolution hearing, and the Landlord's evidence, on November 26, 2013, by registered mail. Each Tenant was served at a different address. A.E. was served by sending the registered mail to the rental unit address after the rental unit had been vacated.

Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for application and hearing documents. The Landlords have applied for a monetary Order which the Act requires that if service is conducted by registered mail the mail must be sent to the address where **each** respondent resides or to a forwarding address provided by each respondent.

In this case two of the three Tenants have been served to a forwarding address, or the address where they reside, and the third Tenant A.E. was served at the rental unit address several weeks after the unit had been vacated. Therefore, I find that the request for a Monetary Order against all three Tenants must be amended to include only the two Tenants who have been properly served with Notice of this Proceeding.

As the third Tenant, A.E. has not been properly served the Application for Dispute Resolution as required by the Act, the monetary claim against A.E. is dismissed without leave to reapply.

Tenant R. P. attended the teleconference hearing and confirmed receipt of the Application for Dispute Resolution and the Landlord's evidence. Based on the foregoing, and the submissions of the Landlord, I find the Tenant S.A. is deemed served notice of this proceeding on December 1, 2013, five days after it was mailed, in accordance with section 90 of the Act. Therefore, I proceeded in the absence of S.A. and in the presence of Tenant R.P.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on November 19, 2013, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep all or part of the security and or pet deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenants for this application.

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

Has the Landlord proven entitlement to a Monetary Order, pursuant to sections 67 and 7 of the *Residential Tenancy Act*?

Background and Evidence

It was undisputed that the parties executed a written tenancy agreement for a fixed term tenancy that commenced on July 1, 2011 and switched to a month to month tenancy after July 31, 2012. The Tenants were required to pay rent of $899.00 on the first of each month and on or before July 1, 2011, the Tenants paid $449.50 as the security deposit. The original tenancy agreement listed two Tenants and a second tenancy agreement was signed on October 9, 2012, adding a third Tenant and a pet deposit of $449.50.

The Landlord testified that on October 3, 2013, they received late notice to end the tenancy effective October 31, 2013. They had posted a final notice of move out inspection that was to take place on October 31, 2013. None of the Tenants attended the unit on October 31, 2013 for the inspection and no keys had been returned.

The Landlord stated that they had received an e-mail on November 2, 2013, indicating the Tenants had left valuable possessions inside the unit. The Landlord did not provide a copy of that e-mail and could not provide testimony as to who sent the e-mail, the date of the e-mail, or the contents of the email.

The Landlord submitted that they took possession of the unit on November 13, 2013 and completed the move out inspection report at that time. They found the unit had been left unclean, with some damage, scattered with debris and some of the Tenants' possessions. As a result the Landlord is seeking the following compensation:

$570.00 – Painting the unit The Landlord did not know when the unit had previously been painted
$405.00 – To re-key the rental unit, building keys, and mailbox keys as the Tenants did not return any keys
$180.00 – 4 hours of cleaning to clean up the rental unit
$110.00 – Carpet cleaning
$400.00 – Pest Control charges as the unit had to be sprayed
$300.00 – Damages caused to the drapery. The Landlord did not know the age of the drapery.
$190.00 – For garbage removal
$ 75.00 – Storage costs to store the Tenants' possessions. The Landlord did not know the details of what was stored or for what period of time.

To support the above claims the Landlord pointed to their evidence which included two receipts that had been generated from the Landlord on November 26, 2013.

The Tenant testified and argued that he had vacated the unit on September 1, 2013 and that he had returned his keys to the Tenant S.A. He had confirmed he had not served the Landlord a notice to end tenancy and had not given his keys directly to the Landlord. He recalled signing a paper to remove his name from the tenancy but he gave that to S.A. and she did not forward it to the Landlord.

The Tenant stated that he had arranged with the other Tenants that the above costs would be their responsibility. He said that after discussing the matter with the other Tenant, he was of the opinion that the security deposit and pet deposit would be used to cover these damages.

Analysis

I have carefully considered the aforementioned, the documentary evidence, and on a balance of probabilities I find as follows:

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. That means the landlord can recover the full amount owed form all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Notwithstanding R.P.'s submission that the Tenants had agreed that A.E. and S.A. would be responsible for the unit, I find the parties remained as co-tenants until this tenancy had ended, and the claim can proceed against R.P. and S.A. as noted in the preliminary issues above.

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*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 21 of the Regulation stipulates that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Based on the foregoing, I accept the evidence and find the Tenants breached sections 32(3) and 37(2) of the Act, leaving the rental unit unclean and with some damage at the end of the tenancy.

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.

Upon review of the evidence I find the Landlord has provided insufficient evidence to prove or verify the actual value of the losses or damages claimed. The Landlord relies on two invoices that were generated by themselves, without providing third party receipts or proof of the actual costs incurred, such as proof of the cost of paint, landfill fees, labour charges, pest control services, or locksmith fees. Furthermore, the Landlord was not able to provide the age of drapery being claimed, the length of time that possessions were allegedly stored, proof of an alleged e-mail, or the date when the unit was last painted.

Simply put, the Landlord relied on rounded off flat rate amounts they provided on their self generated invoice, without any proof that these were the actual amounts paid. In the absence of proof to the contrary, the possibility exists for amounts being charged to be grossly inflated which would not meet the test to prove the actual cost of the loss. Accordingly, I find there to be insufficient evidence to meet the test for damage or loss, as listed above.

Notwithstanding the aforementioned, I accept the Landlord's testimony and evidence that the unit required some cleaning, re-keying, removal of debris, had some damage, and required steam cleaning of the carpet.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Therefore, I accept R.P.'s assertion that the $449.50 security deposit plus the $449.50 pet deposit would cover the cost of this claim and I award the Landlord **$899.00.**

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

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Landlord's award	$899.00
Filing Fee	50.00
SUBTOTAL	$949.00
LESS: Pet Deposit $449.50 + Interest 0.00	-449.50
LESS: Security Deposit $449.50 + Interest 0.00	-449.50
Offset amount due to the Landlord	**$ 50.00**

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$50.00** against R.P. and S.A. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do 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.

The monetary claim against A.E. is dismissed without 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: March 14, 2014

Residential Tenancy Branch