Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF
MNSD FF

Preliminary Issues

The Landlord's application was filed listing the Tenant as the respondent. The cross application was submitted naming the Estate of the Tenant as the applicant and was filed by the Executrix of the Tenant's Estate.

Residential Tenancy Policy Guideline 12 provides in part, that in cases where the executor/executrix of an estate of either the landlord or tenant is making an application for a deceased landlord or tenant, the application must list the executor/executrix's name and the estate of the deceased person.

I advised the participants of the required naming of a person's estate and both parties were in agreement to change the style of cause to reflect the proper naming of the estate. Accordingly, the style of cause on the front page of this Decision was amended, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution

The Landlord filed on July 8, 2015 seeking to obtain a Monetary Order to keep the Tenant's security deposit and to recover the cost of the filing fee from the Tenant.

The Executrix filed the Tenant's application on October 19, 2015 seeking an order for the return of the security and key deposits and to recover the cost of the filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlord and the Executrix. The Executrix provided affirmed testimony that the Tenant passed away naming the Tenant's daughter as the Executrix and the Tenant's son as Executor in her will. The Executor testified that Tenant's will had been filed for probate and the Executor had full authority to act in absence of the Executor and on behalf her mother's Estate in this tenancy matter.

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.

On October 19, 2015 the Executrix submitted 11pages of evidence with her application for Dispute Resolution to the Residential Tenancy Branch (RTB). The Executrix affirmed that she served the Landlord with copies of the same documents that she had served the RTB. The Landlord acknowledged receipt of these documents and no issues were raised regarding service or receipt of those documents. As such, I accepted those documents as evidence for these proceedings.

On October 19, 2015 the Landlord submitted 9 pages of evidence to the RTB. The Executrix argued that the Landlord had not served her with a copy of his application for Dispute Resolution within the required three day period as stipulated by the Rules of Procedure. She asserted that she was not served the application until October 2015 when they served their evidence. The Executrix argued that the application may not be binding.

The Landlord testified that they did not serve their application upon the Tenant until October 16, 2015. He submitted he did not know why there was a delay in service other than to say that the documents were handled by his office staff.

Section 59(3) provides in part, that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Policy Guideline 3.1 stipulates, in part, that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of the application for dispute resolution.

The hearing package contains instructions on service provisions of the application and clearly states that the applicant **must** serve the respondent within 3 days of receiving the hearing documents.

In this case the Landlord had no reason as to why his application was delayed in being served upon the respondent, other than to say it was left with his office staff. Therefore, I find there were no extenuating circumstances that prevented the Landlord from complying with the service requirements prescribed by the *Act* and the Rules of Procedure.

In cases such as these, where an application is not served in accordance with the *Act,* the RTB's policy is to dismiss applications with leave to reapply. That being said, in this case the Landlord had sought to keep the security deposit and recover the filing fee while the Executrix had filed for the return of the security and key deposits and to recover the filing fee. As such, if I dismissed the Landlord's application with leave to reapply and determined the disbursement of the security deposit based on the Tenant's application, the Landlord could file another application for damage or loss which would only delay the finalization of these tenancy matters. Therefore, as these issues were significantly link to the security deposit, I continued with hearing the merits of both applications.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to retain the security and key deposits?
2. If not, should those deposits plus interest be returned to the Tenant's estate?
3. Should the security deposit be doubled if ordered to be returned to the Tenant's estate?

Background and Evidence

The Tenant entered into a written fixed term tenancy agreement which began on April 1, 1996 and switched to a month to month tenancy after March 31, 1997. Rent began at $840.00 per month and was subsequently increased to $1,160.00 per month. On February 25, 1996 the Tenant paid $420.00 as the security deposit and on April 13, 2015 the Tenant paid $50.00 as a key deposit for a second key.

The rental unit was described as a two bedroom apartment located in a building that was built in approximately 1965. The current owner has owned the building for approximately ten years and the property manager has managed this building for approximately 5 years.

On May 20, 2015 the unfortunate passing of the Tenant occurred in the living room of the rental unit. Sometime between May 20 and May 30, 2015 the Executrix gave the Landlord written notice to end the tenancy effective June 30, 2015. A preliminary walk through was conducted with the resident manager who advised the Executrix and Executor on what work was required to be completed in order to obtain the return of the security deposit. The Executrix and the Executor emptied and cleaned the rental unit by May 29, 2015.

On June 1, 2015 the Executor gave the Landlord written permission for unlimited entry into the vacant rental unit to conduct renovations. The Landlord arranged for the final move out inspection to be completed on June 26, 2015. Both parties were represented at the move out inspection and signed the condition inspection report form.

The Landlord filed seeking $468.00 damages to be offset against the deposits. The Landlord's claim was comprised of the following: $85.00 blind cleaning; $50.00 to wash the balcony; $30.00 repair balcony handle door; $50.00 to clean dining room light; $170.00 to shampoo the carpet. No documentary evidence was submitted in support of the aforementioned amounts claimed.

The Landlord testified that the carpet in the rental unit had to be changed because they could not get the stains out of the carpet in the living room. He asserted that he had to change the carpet in the 2 bedrooms, the hallway, and the living room because the carpet had to be the

same color in the entire rental unit. He stated that his claim was only to keep the deposits although his cost to replace the carpet was $2,669.10, as per the invoice submitted into evidence.

The Tenant testified that she and her brother worked very hard to clean up that apartment before they left at the end of May 2015. They did everything they could to accommodate the Landlord and end the tenancy correctly. They paid rent for June 2015 and allowed the Landlord full access to conduct maintenance so they did not lose out on future rent.

The Tenant asserted that the building manager told them that they did not need to pay to have the carpets steam cleaned because they were very old carpets and were scheduled to be replaced. She asserted that upon completion of the move out inspection she was told she would be getting the full deposits and interest returned.

The Tenant submitted that the rental unit and carpet were old when her mother started her 19 year tenancy. She stated that her mother kept the unit in good clean condition during her tenancy. She argued that the Landlord did not conduct renovations or regular maintenance on the rental unit during this tenancy; therefore, the work should be considered normal wear and tear.

The Landlord stated that he could not find the record of when the carpet had originally been installed into the rental unit. He confirmed that the Tenant kept the rental unit clean and in good condition during her tenancy. He agreed that the carpet had been in the unit prior to the start of this tenancy. He argued that the resident manager was the “part time manager” and if he agreed that the Executrix did not have to pay to clean the carets he should have initialled the move out inspection report stating that.

The Landlord testified that he did not submit invoices or timesheets into evidence to support the amounts claimed for the other repair and cleaning items. He submitted that it is their policy to only hire their own handymen to do the work so the amounts would have been based on the time spent to do the work.

Analysis

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

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.

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case proper notice was given to end the tenancy effective June 30, 2015 in accordance with section 45(1) of the *Act.* The unit was emptied completely and cleaned by May 30, 2015. On June 1, 2015 the Landlord was given full access to the vacant rental unit to conduct their maintenance and renovation work. The final move out inspection was not scheduled by the Landlord until June 26, 2015.

Based on the foregoing, I find the Tenant's estate is not responsible for costs claimed for cleaning of the blinds, balcony, or dining room light. I make this finding in part, because the inspection report was not completed until twenty six days after the unit had been emptied, cleaned, and the Landlord's handymen had been given full access to enter the unit and conduct renovations.

The handymen could have easily caused the blinds and balcony to become dusty or dirty during their renovations to the unit during that 26 day period. The move out inspection report did not indicate that the patio door handle needed repairs. In addition, the Landlord did not provide sufficient evidence to support the actual amounts being claimed for these items. Therefore, I find there was insufficient evidence to prove the Landlord's claim for cleaning of the blinds, balcony, dining room light, and repairs to the patio door handle, and the claims are dismissed, without leave to reapply.

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 carpet, I have referred to *Residential Tenancy Policy Guideline 40,* which provides that the normal useful life of carpet is ten (10) years.

The undisputed evidence was the carpet was pre-existing at the start of this 19 year tenancy making it older than 19 years. Accordingly, I conclude the carpet had far exceeded its' normal useful life and therefore had a depreciated value of zero.

In addition, I accept the Tenant's submission that the building manager told her that they were not required to steam clean the carpet because it was so old it was scheduled to be replaced. This submission was supported by the fact that the Landlord not only replaced the living room carpet; rather, they replaced the carpet in the entire rental unit. Accordingly, the claim for carpet cleaning is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has not succeeded with their application; therefore, I decline to award recovery of their filing fee, pursuant to section 72(1) of the Act.

Based on the above, I grant the full application filed on behalf of the Estate of the Tenant and order the return of the $50.00 key deposit; the $420.00 security deposit; plus $67.48 interest owed on the security deposit, for a total amount of **$537.48.**

Residential Tenancy Branch Rule of Procedure 2.6 provides that an application for dispute resolution has been filed when it has been submitted and the fee is paid or all documents for a fee waiver are submitted to the Residential Tenancy Branch directly or at a Service BC office.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlord submitted their application for dispute resolution on July 8, 2015 and paid the applicable fee on July 8, 2015. Therefore, the application was technically filed within 15 days of the tenancy ending. That being said there was question as to the improper service of the application as it was served upon the respondent 3 months after it was filed and not 3 days as required by section 59 of the *Act.*

After consideration of the above; the fact that the respondent received the Landlord's application almost two months prior to the hearing in time to file a cross application; and in consideration of the reasons why this matter proceeded to be heard as scheduled; I find the respondent is not entitled to the doubling provision of the security deposit as set out in section 38(6) of the *Act.* Accordingly, the request for the doubling of the security deposit is dismissed, without leave to reapply.

The Estate of the Tenant has primarily succeeded with their application; therefore, I award recovery of their **$50.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Landlord was not successful and their application was dismissed, without leave to reapply.

The application on behalf of the Estate of the Tenant was successful and they were awarded monetary compensation of **$587.48** ($537.48 + $50.00).

The Tenant's estate has been issued a Monetary Order for **$587.48**. 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 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: December 21, 2015

Residential Tenancy Branch