Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUKE LIMITED PARTNERSHIP and RHAPSODY PROPERTY MANAGEMENT SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $8,190.80 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Tenant PM attended the hearing on behalf of himself and tenant KS. The landlords were represented by the Vice President of Operations of the property management company named as a landlord by the tenants. Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant PM testified, and the landlords' representative confirmed, that the tenants served the landlord with the notice of dispute resolution form and supporting evidence package. The landlords' agent testified, and the tenant PM confirmed, that the landlords served the tenants with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Preliminary Matter – Abandonment of Claim

At the outset of the hearing, tenant PM advised me that the tenants were abandoning the portion of their claim related to an alleged improper charging of a late fee by the landlords. He testified that the late fee had been reimbursed subsequent to the filing of the application for dispute resolution. The monetary value of this claim amounted to $30.00.

Tenant PM stated that the tenants wanted to proceed with the balance of their claim (for $8,160.80)

Preliminary Issue – Removal of Party

The tenants named both the owner of the rental property ("**DLP**") and the property management company ("**RPM**") as landlords in this action. The landlords' representative submitted that RPM is not properly a party to this proceeding, as it is not a registered owner of the rental property and as it was not a signatory to the tenancy agreement (DLP is listed as the landlord on the tenancy agreement).

Tenant PM argued that RPM is properly a party to the proceeding as it meets the definition of "landlord" as defined in section 1 of the Act:

> **"landlord"**, in relation to a rental unit, includes any of the following:
> (a)the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
> (i)permits occupation of the rental unit under a tenancy agreement, or
> (ii)exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

He argues that as a property management company, RPM is an agent of the DLP and in this capacity exercised power and performs duties under the Act and the tenancy agreement. He testified that, as far as he understood, RPM and DLP were one and the same, and that whenever the tenants had any issues with the rental unit, they dealt with RPM, and that RPM's property managers had the DLP logo on their business cards. Accordingly, he argues that RPM is a landlord pursuant to section 1 of the Act and is properly named as a party to this application.

I find that RPM is an agent of DLP, given that, among other things, the landlords' agent referred to RPM as DLP's agent on more than one occasion. I also find that RPM exercised powers and performed duties under the Act, including accepting service of documents, serving documents on the tenants, and communicating with the tenants regarding repairs made to the rental unit.

However, just because RPM fits the definition of a landlord pursuant to the Act does not mean that they are properly named a party to this application. The tenants seek a reimbursement of rent based on an agreement entered into between themselves and DLP. They allege that RPM, in their capacity as agents for DLP, caused DLP to enter into the agreement. They are not alleging that RPM agreed to, independent of DLP, pay them an amount of money. The tenants are seeking a *reimbursement* of monies already

paid. As the tenancy agreement is between the tenants and DLP, this reimbursement must necessarily come from DLP (RPM cannot reimburse what was never paid to them).

Accordingly, despite the fact RPM may meet the definition of landlord as stated in section 1 of the Act, I find that RPM is not properly a party to this proceeding, for the reasons stated above. I order that, pursuant to Rule of Procedure 4.2, this application be amended to remove RPM as a party to the proceeding.

For the remainder of this decision, when I refer to the "landlord" I am referring to DLP.

Issues to be Decided

Are the tenants entitled to:

1) a monetary order in the amount of $8,160.80; and
2) recover their filing fee from the landlord?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The facts of this case are not in dispute. The parties entered into a written tenancy agreement starting May 15, 2018. Monthly rent is $2,274.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of $1,137.00. The landlord still retains this deposit.

On September 3, 2018, a flood occurred in the rental unit as the result of an improperly installed dishwasher. The tenants were required to vacate the rental unit so that repairs could be made.

The tenants and an employee of RPM (which, as stated above, is an agent of the landlord) entered into an agreement where the tenants would be permitted to move into a neighboring unit (unit 1705), at no cost, and would be reimbursed the rent they were paying for the rental unit for the time they were staying in unit 1705.

On September 9, 2019, tenant PM wrote the assistant property manager (an RPM employee) to confirm this agreement. He wrote:

> To confirm the plan, we'll be living in unit 1705 temporarily until our unit is ready. We'll be getting our rent reimbursed for each day that we're in unit 1705, and we won't be paying hydro in either unit during this time.

The following day, the assistant property manager responded via email:

> You are correct about the rent however you'd still need to pay your BC Hydro bill unless your bill comes out a lot higher than normal. In that case, you may forward it to us and we'll take it up to our management for consideration of reimbursement.

The tenants entered copies of these emails into evidence.

The tenants moved into unit 1705 on September 8, 2019. They moved back into the rental unit on December 19, 2018.

On December 20, 2018, tenant PM emailed the assistant property manager and requested the rent reimbursement in the amount of $8,160.80, calculated as:

Pro-rated September rent	$1,777.60
October rent	$2,424.00
November rent	$2,424.00
Pro-rated December rent	$1,535.20
Total	**$8,160.80**

Later that same day, the assistant property manager replied and stated that she needs to get RPM's regional manager's (her supervisor) approval before issuing the reimbursement.

The tenants followed up with the regional manager "a few times", and, on February 14, 2019, received an email from her which, in part, stated:

> I followed up this morning and we are just waiting to discuss with insurance company to see if you will receive [the reimbursement] in form of credit or by check. I will be at [the rental property] the following week and I should know by then.

On March 4, 2019 having not heard back from the regional manager, the tenants emailed her. She replied, and requested a call with tenant PM. Tenant PM testified that she called that same day, and advised him that "the building owners had changed their minds and would not be reimbursing" the tenants. The landlord's agent stated he could not confirm if this call took place, or what was discussed. He did not, however, contradict tenant PM's account of what was discussed. He did confirm that, to date, the tenants' rent for the period of time between September 9, 2018 and December 19, 2018 had not been reimbursed by DLP.

Tenant's Position

The tenants seek a monetary order in the amount of rent they paid, which they argue ought to be reimbursed pursuant to the agreement with DLP.

Landlord's Position

The landlord's agent did not dispute any of the underlying facts of the case. He accepted the meaning of the September 9, 2019 email in which the tenants and the assistant property manage memorialised in writing the agreement that the tenants would be reimbursed their rent while not residing in the rental unit (the "**September Agreement**").

Rather, the landlord's agent argued that the assistant property manager, as an employee of RPM, did not have the authority to bind DLR to the September Agreement, and that, if she did, the September Agreement was subject to approval of the DLR, as per the email from the assistant property manager dated September 10, 2018.

Additionally, in the landlord's written submissions (although not in the landlord's agent's oral arguments), the landlord argued that, pursuant to section 33 of the tenancy agreement, agents of the landlord (e.g. RPM) do not have authority to make promises, representations, or agreements which would bind or create obligations for DLR unless agreed to by DLR in writing.

Section 33 of the tenancy agreement, in part, states:

> Neither we nor any of our representatives have made any oral promises, representations, or agreements. This Lease Contract is the entire agreement between you and us. Our representatives (including management personnel, employees, and agents) have no authority to waive, amend, or terminate this Lease Contract or any part of it, unless in writing, and no authority to make

> promises, representations, or agreements that impose security duties or other obligations on us or our representatives unless in writing.

The landlord's agent also argued that it supplied the tenants with accommodation equal to or greater in value to that of the rental unit when the tenants were displaced. He argued that this ought to be sufficient to satisfy any obligation owed to the tenants as the result of their having to vacate the rental unit while repairs were made.

Analysis

As the facts of the case are not in dispute, I adopt the facts as set out above as my findings.

No Authority of RPM

I do not find the landlord's argument that the assistant property manager did not have any authority to bind DLR in the September Agreement to be persuasive. I have already found that RPM is an agent of DLR (see Preliminary Issue – Removal of Party). I accept the tenants' testimony that they communicated with employees of RPM when dealing with issues related to the rental unit.

I disagree with the landlord's interpretation of section 33 of the tenancy agreement. The landlord, in its written submissions, suggests that in order for an agent of DLR to be able to have authority to impose responsibilities on DLR, it must have authorisation from DLR in writing.

Rather, I find that section 33 of the tenancy agreement explicitly grants DLR agents authority to entered into agreements which would impose obligations on DLR. The caveat to their authority being such an agreement (in this case, that the tenants' rent is waived) must be made *in writing*.

The landlord's interpretation of section 33 does not withstand a close reading of the section. This section, in part, reads:

> Our representatives […] (including management personnel, employees, and agents) have no authority […] to make promises, representations, or agreements that impose security duties or other obligations on us or our representatives unless in writing.

Adopting the landlord's interpretation it would mean that in order for a representative to make a promise that imposes obligations on itself, it would first be require to get its own approval in writing.

I also find it unreasonable to expect that, every time the tenants request that RPM address an issue with the rental unit (for example, to make a routine repair), the tenants obtain written approval from DLR to confirm that the RPM can make a promise (for example, that they will make a repair) that would impose an obligation on DLR (for example, to complete the repair). Such an arrangement would be onerous not only on the tenants, but also on DLR itself, and would seem contrary to the purpose of a property owner hiring a property management company.

As such, I find that, as an agent of DLR, RPM had the authority to enter into the September Agreement. I find that in order for the September Agreement to be valid pursuant to the tenancy agreement it must be in writing. I find that the email sent by the assistant property manager to tenant PM on September 10, 2019 is sufficient to satisfy this writing requirement.

<u>September Agreement Subject to DLR Approval</u>

The landlord's agent argued that the September 10, 2019 email of the assistant property manager indicated that the September Agreement was subject to approval of DLR.

I find that a plain reading of the September 9 and 10, 2019 emails shows that this is incorrect. Together, these email read:

> **Tenant PM:** To confirm the plan, we'll be living in unit 1705 temporarily until our unit is ready. We'll be getting our rent reimbursed for each day that we're in unit 1705, and we won't be paying hydro in either unit during this time.
>
> **RPM:** You are correct about the rent however you'd still need to pay your BC Hydro bill unless your bill comes out a lot higher than normal. In that case, you may forward it to us and we'll take it up to our management for consideration of reimbursement.

It is clear from a plain reading of RPM's response that the reimbursement of rent was not subject to approval of DLR, or indeed anyone else. As such, I find that the September Agreement is valid and is not subject to the approval of DLR.

Even if these emails are interpreted as the landlord's representative argues – that authorization is required – it does not follow that it is DLR's authorization. RPM's email states that whether hydro will be reimbursed is subject to approval of "management" not DLR. I find that "management" means RPM management. I make this finding on the basis that on December 20, 2018, the assistant property manager states she needs to get RPM's regional manager's approval before issuing payment to the tenants.

I find that the assistant property manager's assertion that she needed to get the regional manager's approval to not be in keeping with the September Agreement. While she may have needed management's approval to obtain the means of payment for the tenants, the tenants' entitlement to a reimbursement of rent is not subject to such approval under the terms of the September Agreement.

In any event, based on subsequent correspondence, it appears that such approval was granted by the regional manager as, on February 14, 2019, she indicated payment would be forthcoming, and all that remained would be to determine the form the reimbursement would take (credit to rental account, or payment by cheque).

As such, in the event that I am incorrect to in saying that the September Agreement was not subject to approval, I find that, if approval was required, it was required of RPM management, not DLR, and that RPM management granted such approval.

No Obligation of DLR as it Provided Alternate Accommodations

I am not persuaded by the landlord's representative's argument that the September Agreement ought to be set aside as the landlord provided alternate accommodations, at no cost, to the tenants while they were required to vacate the rental unit.

As stated above, the September Agreement is a valid agreement, and not subject to approval of DLR. As such, DLR is bound by its terms. The landlord's representative referenced no authority by which I might set the September Agreement aside on the basis that it is unfavourable to the landlord, or it requires that the landlord give more to the tenants than they might otherwise be required to pursuant to the Act.

As such, I decline to set aside the September Agreement.

I find that the DLR is bound by the September Agreement, and are obligated to reimburse the rent the tenants paid from September 8 to December 19, 2018 in the amount of $8,160.80.

Even if DLR can show that RPM acted improperly in binding them to the September Agreement, DLR's is not entitled to cancel the September Agreement. Such a course of action would be unfair to the tenants, who entered into the September Agreement in good faith with an entity who they understood to have the authority (per the tenancy agreement) to make such an agreement.

As the tenants have been successful in their application, they are entitled to the reimbursement of the filing fee from the landlord in the amount of $100.00.

Conclusion

Pursuant to sections 67 and 72(1) of the Act, I order that the landlord DLR pay the tenants $8,260.80.

Pursuant to section 72(2) of the Act, I order that the tenants may deduct from any rent due or which becomes due to the landlord an amount of $8,260.80.

As I am not certain if the tenants intend to continue to reside in the rental unit for four more months, I also issue a monetary order in the amount of $8,260.80, which may be filed in and enforced as an order of the Provincial Court (Small Claims) of British Columbia. For clarity, I order that if the tenants enforce this order, they are not entitled to recover any amount from the landlord that they have already deducted from rent due to the landlord.

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: April 26, 2019

Residential Tenancy Branch