



Regulatory Corner - January 2017

Property manager disciplined for multiple violations of landlord and tenant statute

Property managers continue to engage in conduct that results in consumer complaints and regulatory action. The following scenario provides yet another opportunity to learn from the mistakes of others and hopefully avoid a similar fate.

In September of last year, the Real Estate Commission agreed to settle a disciplinary case against a property manager from the Charlotte area who entered into a lease agreement that violated North Carolina's landlord and tenant statute (Chapter 42 of the North Carolina General Statutes) in multiple respects. The discipline agreed to was a four-month suspension of the broker's license. Although the property manager was able to have that discipline reduced to four months of probation by taking certain actions, including the completion of three extra Continuing Education classes, a summary of his case will nevertheless appear in the February issue of the *Real Estate Bulletin*.

The Charlotte case highlights several provisions of the landlord and tenant statute that don't receive much attention. The case arose after the agent in question entered into a residential property management agreement in May 2015. The agreement called for the property to be leased for \$1000 per month. However, the property was clearly not in \$1000 a month condition. In July 2015, the property manager entered into a lease with tenants who agreed to pay \$140 per month in rent and, in exchange for this low rent, perform renovations.

What the property manager did not realize is that this sort of arrangement did not relieve the landlord of its obligation (set forth in NCGS §42-42(a)(2)) to "put and keep the premises in a fit and habitable condition." Section 42(b) of the landlord and tenant statute makes it explicit that while a landlord and tenant may enter into a subsequent written agreement wherein the tenant agrees to perform specified work on the leased premises, provided that (a) the agreement is supported by adequate consideration other than the letting of the premises, and (b) the agreement is not made with the purpose or effect of evading the landlord's obligations under Section 42.

The property manager's mistakes did not end there. According to the Consent Order signed by the Commission and the property manager, the lease included a late fee beyond the statutory limit set in NCGS §42-46(a)(1). That section states that residential rental agreements may include a late fee provision but only if (a) the fee is chargeable only if any rental payment is

five days or more late; (b) if the rent is due in monthly installments, the fee does not exceed \$15.00 or five percent (5%) of the monthly rent, whichever is greater.

The property manager also managed to violate several provisions of the Tenant Security Deposit Act (the "TSDA"). First, the manager collected a security deposit in excess of the statutory limit set forth in NCGS §42-51(b). That limit varies depending on whether the tenancy is week to week, month to month, or greater than month to month. For a typical lease, i.e. one that is one year in duration, the statutory limit is two months' rent.

The property manager attached an addendum to the lease agreement that allowed the tenant security deposit to be used for various specified costs. The Commission noted that some of those costs were not "permitted uses of the deposit" as specified in Section 42-51(a) of the TSDA. Property managers are encouraged to review the list of permitted uses in Section 42-51(a) whenever there is a question about whether a deduction from a security deposit can be made. The failure of a landlord or property manager to comply with the requirements of that section could subject the offending party to liability for costs and attorneys fees if the tenant brings an action for damages.

The lease addendum violated the TSDA in another respect: it permitted the property manager to disburse the tenant's security deposit during the tenancy. This provision violates section 42-52 which states that money held by the landlord may be applied as permitted in section 42-51, but only "upon termination of the tenancy". When a tenant moves out before the end of the rental period specified in a lease, there may be a question as to whether the tenancy is terminated. Here, however, the addendum improperly allowed the security deposit to be applied while the tenancy was clearly still in effect.

The Consent Order noted one final violation of the TSDA. The property manager failed to inform the tenants and the property owner of the name of the bank where the tenant's security deposit was being held. This notice requirement is set forth in section 42-50 of the Act. That section states that, unless the landlord furnishes the appropriate bond, security deposits from tenants in residential dwelling units must be deposited in a trust account with a licensed and federally insured depository institution lawfully doing business in the state. Section 42-50 concludes as follows: "The landlord or his agent shall notify the tenant within 30 days after the beginning of the lease term of the name and address of the bank or institution where his deposit is currently located or the name of the insurance company providing the bond."

Keeping all of the above-cited statutory requirements in mind should make it easy to avoid the mistakes made by the property manager in Charlotte.

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