

Montana Department of Labor & Industry

Board of Realty Regulation

Newsletter

Volume 2. Issue 3.

October 2010

EXTRACT

Summers vs. Crestview Apartments: Property Manager Law Update

A recent Supreme Court Case has made some findings that will impact licensees performing property management activity. The case is Summers v Crestview Apartments, 2010 MT 164, DA 09-0489 (2010).

The case involves a tenant who had entered into a one year lease on a property at Crestview Apartments, only to breach his lease a few months later in order to purchase a property. A representative of Crestview suggested to the tenant he might consider offering an incentive to get someone to finish the lease. The tenant did place an ad in the newspaper, offering the first month rent free. The responses to the ad (20-30) were referred to the Crestview rental office. Crestview included the apartment in their regular available inventory of 26 similar apartments. Approximately 12 of the other apartments were rented while the tenant's apartment remained unleased.

The tenant moved out mid-October and rent was paid through the end of the month. Crestview notified the tenant that a portion of their security deposit was being deducted and the remainder would be retained until the conclusion of the lease, or until the apartment was re-rented. In November, Crestwood issued a three-day notice to quit or pay rent for November. Crestview then issued a "Statement of Deductions from the Security Deposit" showing total deductions, including rent through the end of the lease of \$6505.75. The next day Crestview's collection agency notified the tenant he owed \$9,758.63, which included the balance from the accelerated rental payments plus a 50% collection fee. The apartment was finally rented on June 1, 2007, just one month prior to the expiration of the lease.

The tenant sued for wrongful withholding of the security deposit, based on the Security Deposits Act, violations of the Landlord and Tenant Act, lack of mitigation efforts, and misleading language contained in the written lease agreement. The tenant also sued the collection agency but that matter was settled.

The discussion in the Supreme Court included three issues:

Whether Crestview wrongfully deducted future unpaid rent from the security deposit. The Court determined that MCA, 70-25-201(1) allows a landlord to deduct from the security deposit "Money owing to the landlord at the time of deduction, including rent owed". However, Crestview had deducted money owed at the time of deduction as well as the remaining eight lease payments that would have been due under the lease. The Court found that the remaining lease payments were not owed at the time of deduction. Therefore, Crestview could not deduct future rent from the security deposit and withholding accelerated rent from the security deposit was illegal under § 70-25-201(1), MCA.

Whether the Landlord and Tenant Act prohibits an accelerated rent provision in a lease agreement. The Court found that although Crestview cannot collect accelerated rent upon a tenant's breach of a lease, Crestview does retain other remedies under the Landlord and Tenant Act. Specifically, § 70-24-427(1), MCA, provides, "[i]f the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement." In this case, Crestview unreasonably benefitted from the tenant's breach of the lease by collecting rent not yet due while simultaneously offering the apartment for rent. Under this provision, the tenant would have to pay in advance for an apartment that was no longer in his possession. Crestview had no incentive to rent the vacant apartment since it had already received rent through the end of the lease term. Consequently, the Court concluded as a matter of law that an accelerated rent provision in a lease agreement conflicts with the landlord's duty to

mitigate damages under § 70-24-401(1), MCA. A more equitable result would have been for Crestview to continue charging rent on a monthly basis until the apartment was rented to a new tenant.

Whether the Landlord and Tenant Act prohibits a lease agreement from imposing an obligation on the tenant to pay the landlord's attorney fees. The Crestview lease agreement purported to require the tenant to pay the landlord's attorney fees if the tenant breached the lease. The Landlord and Tenant Act specifically provides that "reasonable attorney fees...may be awarded to the prevailing party notwithstanding an agreement to the contrary." § 70-24-442(1), MCA. The Court determined that the attorney fee terms in the Crestview lease agreement directly violate the Landlord and Tenant Act by binding the tenant to an absolute attorney fee obligation and attempting to avoid a discretionary award of attorney fees to the prevailing party as provided in the Act.

The Court then discussed the enforceability of the Crestview lease agreement. Normally, when a court concludes that a provision of a rental agreement is unlawful, the court may still enforce the remainder of the agreement. However, the court may refuse to enforce the remainder of the agreement in order to avoid an unconscionable result. The Court said that to enforce the Crestview rental agreement even without the unlawful provisions would lead to an unconscionable result. The Court felt that such unlawful provisions as contained in the Crestview lease would continue to appear in leases if the only legal repercussion was to sever such prohibited clauses from the agreement. Landlords would have little incentive to change their practices. Consequently the Court held that the entire lease agreement was unenforceable by Crestview.

The Court also observed that the Landlord and Tenant Act provides that if a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover up to three months rent in addition to his actual damages. § 70-24-403(2), MCA. Therefore, said the Court, this tenant may be entitled to damages from Crestview. The Court remanded the matter back to the district court in order to determine the damages, attorney fees and costs owed to the tenant.

In short, the Court held:

A landlord cannot deduct future unpaid rent from the security deposit;

Any provision prohibited by 70-24-202 which is included in a rental agreement is unenforceable. 70-24-403(1), MCA.

A provision for accelerated rent upon breach is unconscionable and unenforceable;

A contractual obligation to bind a tenant to an absolute attorney fee obligation and to attempt to avoid a discretionary award of attorney fees to the prevailing party is in violation of Montana law;

Enforcement of the remainder of the lease agreement even without the unlawful provisions would lead to an unconscionable result because it would tell other landlords that they could keep the unenforceable provision in their agreements. The only consequence would be that a reviewing court would hold that one provision unenforceable. The Court wanted to send a message to all landlords that inclusion of such a provision might lead to loss of the entire agreement. Therefore, the Court concluded that the entire lease agreement is unconscionable and unenforceable.

The Court found that the tenant is the prevailing party entitled to attorney fees and may also be entitled to a penalty of three month's rent.

The Court sent the case back to the district court so that the district court could determine the amount of attorney fees and penalties that the landlord must pay to the tenant.