Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKY MOUNTAIN PROPERTY MANAGEMENT CO. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the "*Act*") for compensation for damages, compensation for unpaid rent, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the "Landlord") was present for the teleconference hearing, as was the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Landlord's evidence. The Landlord confirmed receipt of a copy of the Tenant's evidence. Neither party brought up any issues regarding service.

The parties were affirmed be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be authorized to retain the security deposit towards compensation owed?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement that was submitted into evidence. The tenancy started on September 1, 2015. Monthly rent was initially $3,000.00 but the parties agreed that this was increased to $3,600.00 after the initial fixed term tenancy ended. The Tenant paid a security deposit of $1,500.00 and a pet damage deposit of $1,500.00. The Landlord confirmed that he still holds the deposits totalling $3,000.00.

The Tenant stated that they moved out on June 30, 2019 while the Landlord stated that the Tenant was to move out on June 30, 2019 but did not complete moving out until July 3, 2019.

The Landlord has applied for compensation in the amount of $7,492.49. This includes a claim for $4,725.00 for landscaping. The Landlord provided testimony that this was the amount required to bring the property back to the condition it was at the start of the tenancy. The Landlord provided a quote for landscaping dated July 10, 2019 in the amount of $4,725.00. The Landlord stated that they have had the landscaping work completed and that it ended up costing more than the amount quoted; however, they are seeking the quoted amount only.

The Landlord also submitted photos taken after the tenancy ended and stated that the photos show areas full of leaves and overgrown grass, and also noted that some areas of grass were killed by the leaves not cleaned up as well as a boat parked on the yard.

The Landlord stated that the Tenant was responsible for yard maintenance during the tenancy as stated on the tenancy agreement addendum dated July 19, 2015. A copy of the addendum was submitted into evidence.

The Tenant provided testimony that the lawn was mowed weekly, and other yard maintenance was conducted such as trimming the bushes. He stated that this was a large property with lots of wooded areas and that there were some sticks and other typical yard debris around at the end of the tenancy. He stated his position that the Landlord did not take steps to mitigate given that any issues with the yard/landscaping were never brought up during the tenancy.

The Landlord submitted a copy of a move-in inspection report that was completed on August 28, 2015. The move-out section of the report was not completed. The Landlord testified that the move-in was signed by both parties. He stated that at move out on June 30, 2019 he met with the Tenant and asked if there was any damage and the Tenant responded that there was not. The Landlord confirmed that the walk-through at move-out was verbal only and that nothing was put into writing. He stated that as the Tenant was not truthful regarding damage to the property he did not think it was worth doing the paperwork.

The Tenant confirmed that he was present at the move-in inspection and signed his agreement to the condition of the property at move-in. He was also in agreement that there was no signed move-out inspection report and stated that there was no discussion about signing an inspection report. The Tenant stated that he did not agree in writing to any deductions from the deposits.

The Landlord has also claimed $1,212.75 for cleaning which he confirmed was the actual amount paid for cleaning of the rental unit. The Landlord submitted an invoice for this amount dated July 5, 2019. He stated that the walls required cleaning as did the fireplace, doors, windows and other areas of the rental unit and referenced the photos submitted into evidence. The Landlord stated that there was significant dust and spider webs throughout the rental unit.

The Tenant stated that while some spider webs may have been missed in high areas, they cleaned the rental unit to a high standard prior to moving out and spent at least a day cleaning. The Tenant also noted that during the tenancy they regularly had a company attend to deal with rodents and clean up spider webs which was last done in May 2019.

The Landlord is seeking $960.00 for overholding of the rental unit. He stated that the Tenants parked a shipping container in front of the garage door of the rental unit, which made the garage inaccessible. The Landlord testified that the shipping container was moved on July 3, 2019 and therefore the Landlord is claiming compensation for the period of July 1 to July 3, 2019 when the garage was blocked by the container.

The Landlord also noted that the Tenants steam cleaned the carpets which left the carpets wet for a period of a few days and therefore the Landlord was unable to move any items into the home until the carpets were dry. The Landlord stated that the calculations were based on the pro-rated rent amount for the days that both the

container and carpets made the home inaccessible. The Landlord stated that the parties had discussed compensation by email but did not reach an agreement.

The Tenant stated that the container could not be picked up as planned and instead was picked up on July 2, 2019. The Tenant agreed that the container was in front of the garage and that access was limited but stated that the home was still accessible as was the garage which had other means of access.

The Tenant submitted copies of email communication with the Landlord. In an email dated June 28, 2019 the Tenant stated that the container would be removed by the following Tuesday, which would be July 2, 2019.

The Tenant stated that the carpets had been cleaned with a steam cleaning machine and that while they may have been a bit damp, they were not soaked. He stated his position that the carpets may have needed a few hours to dry.

The Landlord has claimed $124.74 for utilities which the Tenant agreed to pay and did not dispute.

Lastly, the Landlord is seeking $470.00 for repairs to the rental unit. The Landlord stated that this amount was for minor repairs including fixing and staining the floor, hooking up the gas stove, repairing the lock on the door after it was kicked and the lock broke, and repairing a wood vent that was broken.

The Landlord submitted a quote for hooking up the gas stove dated July 3, 2019 in the amount of $225.00. The Landlord stated that although this was a quoted amount, this was the amount actually paid. The Landlord also submitted an invoice dated July 5, 2019 in the amount of $245.00 for the remainder of the repairs.

The Tenant stated that there was no damage to the rental unit and instead there was reasonable wear and tear on an older home. He noted that he never kicked the door in, but that the lock fell apart on a few occasions and had to be put back together. The Tenant stated that they had used their own gas stove and replaced the original stove back at the end of the tenancy, although it was not hooked up.

However, the Tenant questioned the quoted amount for the gas hookup as stated that he has professional experience with this and that the usual cost would be $100.00 to $125.00.

The parties were in agreement that the Tenant's forwarding address was provided to the Landlord on July 10, 2019.

Analysis

As the Landlord has applied for monetary compensation, I refer to Section 7 of the *Act* which states the following regarding compensation:

> 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.
> (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.

I also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure,* the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord has the burden of proof.

Regarding the Landlord's claim for landscaping costs, I decline to award any compensation. While Section 37 of the *Act* states that a tenant must leave a rental unit reasonably clean and undamaged, I am not satisfied that the Tenant was in breach of this section of the *Act.*

As stated in Section 35 of the *Act,* a landlord and tenant must complete an inspection of the rental unit and the inspection must be in writing and signed by both parties. The parties were in agreement that a move-in inspection was completed but a move-out inspection was not completed in writing. In the absence of a signed move-out report, I do not find that the Landlord has established that the Tenant breached the *Act* regarding the property/yard. While the Landlord submitted photos that he stated were taken at the end of the tenancy, the Tenant stated that the yard was maintained during the tenancy and disputed that he owed any amount towards landscaping. In the absence of sufficient evidence to establish the condition of the yard at the beginning and end of the tenancy, I am not satisfied that the Landlord has established that the Tenant was in breach of the *Act.*

Accordingly, I do not find that the Landlord met the burden of proof regarding the claim for landscaping. This claim is dismissed, without leave to reapply.

As for the Landlord's claim for cleaning, I also decline to award any compensation. The parties were not in agreement as to the cleanliness of the rental unit at the end of the tenancy. When parties to a dispute resolution proceeding provide differing testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to support their position.

As stated, the parties did not complete a Condition Inspection Report at move-out which would have been the Landlord and Tenant's agreement as to the condition of the rental unit at the end of the tenancy. In the absence of this report and without sufficient evidence as to the condition of the unit other than photos, I am not satisfied that the Tenant did not clean the rental unit to the standard that they stated they did. The Landlord's claim for cleaning is dismissed, without leave to reapply.

Regarding the claim for overholding of the rental unit, the parties were not in agreement as to whether the storage container was blocking access to the garage. However, the Tenant did agree that there was a delay in having the container picked up and that it was in front of the garage for two additional days. As such, I do find it likely that this blocked some access and that the Landlord should be compensated given that all of the Tenant's belongings were not moved off the residential property on June 30, 2019.

Although I do not find sufficient evidence to determine whether or not the carpet was too wet to move in, I do accept that the storage container was on the property past the end of the tenancy. While the Landlord stated that the container was moved July 3, 2019, I find an email from the Tenant on June 28, 2019 confirming that the container would be moved on July 2, 2019.

In the absence of additional evidence that would confirm a different date, I find that the container was likely moved on July 2, 2019. Therefore, I find that the Landlord is entitled to rent for July 1 and July 2, 2019. At a monthly rent amount of $3,600.00, I find that the monthly rent for each day of July would be $116.13. Therefore, I award the Landlord $232.26.

As the Tenant agreed to pay $124.74 for utilities as claimed by the Landlord, I award this amount to the Landlord.

Regarding the repairs claimed by the Landlord, I accept the Tenant's testimony that they unhooked the gas stove and did not hook it back up at the end of the tenancy. As such, I find that the Landlord should be compensated for the cost of this given that the rental unit was not left in the same condition as it was at the start of the tenancy.

Although the Landlord submitted a quote for the cost of the repair, I accept the Landlord's testimony that this was the amount spent on the repair and therefore award an amount of $225.00. While the Tenant testified that this amount seems high, I accept that this was the amount paid by the Landlord.

As the Landlord applied to retain the security deposit and pet damage deposit towards compensation owed, I refer to Section 38(1) of the *Act* which states that a landlord has 15 days from the later of the date the tenancy ends or the date the forwarding address is provided in writing to return the deposits or file a claim against them.

Both parties were in agreement that the Tenant's forwarding address was provided on July 10, 2019 and as the Landlord filed the Application for Dispute Resolution on July 11, 2019, I find that he was in compliance with Section 38(1). Therefore, I find that the Landlord does not owe the Tenant double the deposits and may deduct the amount found to be owing from the deposits.

As the Landlord was partially successful with the application, pursuant to Section 72 of the *Act,* I award the recovery of the filing fee paid for the Application for Dispute Resolution in the amount of $100.00.

As the security deposit and pet damage deposit are more than the amount found to be owing to the Landlord, the Tenant is granted a Monetary Order for the return of the remainder of the deposits as follows:

Return of security deposit	$1,500.00
Return of pet damage deposit	$1,500.00
Less overholding July 1-July 2, 2019	*($232.26)*
Less utilities	*($124.74)*
Less hookup of gas stove	*($225.00)*
Less filing fee	*($100.00)*
Total owing to Tenant	**$2,318.00**

Conclusion

Pursuant to Sections 38, 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **$2,318.00** for the return of the security deposit and pet damage deposit

after deductions as outlined above. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 22, 2019

Residential Tenancy Branch