



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes **MNRL-S, MNDL-S, MNDCL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38;
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38;
- An order to be compensated for a monetary loss or other money owed and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was examined.

Preliminary Issue – service of the Notice of Dispute Resolution Proceedings

The tenant denied being served with the landlord’s Notice of Dispute Resolution Proceedings package. The landlord testified that he sent the package via registered mail to the tenant at the forwarding address provided by the tenant on March 31, 2022.

The landlord testified he also sent a courtesy copy of the Notice of Dispute Resolution Proceedings package to the tenant via email on April 3, 2022, which the tenant acknowledges was received, although disputes he received all of the landlord’s evidence. There is no indication the tenant communicated with the landlord seeking another copy of the landlord’s evidence.

The tracking number for the registered mailing is recorded on the cover page of this decision. The landlord testified that all the evidence he provided to me for this hearing was also provided to the tenant in the package sent.

The tenant testified that the forwarding address he provided to the landlord is a post office box. Both parties agreed that I could review the tracking of the package on Canada Post's website, which I did at the commencement of the hearing. It shows that on April 1, a notice card was left for the tenant to pick up the item. On April 7th, a final notice was issued. On April 22nd, the item went unclaimed by the tenant, and it was returned to the sender. The tenant confirmed the PO box to where the Notice of Dispute Resolution Proceedings was sent as being his forwarding address during the hearing. Consequently, I deemed the tenant sufficiently served with the Notice of Dispute Resolution Proceedings on April 5, 2022, five days after it was sent via registered mail in accordance with sections 89 and 90 of the Act.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to the monetary order he seeks?

Can the landlord retain the tenant's security deposit?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The rental unit is an entire house located on an acre lot. The fixed 2-year tenancy began on February 1, 2020, with rent set at \$3,400.00 per month payable on the first day of each month. A security deposit of \$1,700.00 was collected from the tenant and a condition inspection report was conducted at the commencement of the tenancy.

The tenant failed to pay rent for the month of October, November and December 2021. On December 11, 2021, the landlord told the tenant that he was coming to the house and on that day, the landlord noticed there was very little furniture left in the house and it appeared the tenant was occupying the house any longer. On December 12, 2021, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities upon the tenant by posting a copy to the tenant's door. The landlord testified that the tenant refused to end the term of the fixed term tenancy, finally moving out on January 10, 2022. This is the last day the tenant removed his belongings.

During the pandemic, the tenant became in arrears of rent in 2020. The landlord and the tenant entered into a loan agreement whereby the tenant would pay the landlord \$610.21 per month in addition to the monthly rent. A copy of the loan, signed by the tenant and another person not named on the tenancy agreement was provided as evidence. This loan includes interest at the rate of 12%. The landlord testified that the tenant owes \$2,940.84 on the loan agreement.

The landlord seeks payment of utilities from the tenant. He testified that as of October 15, 2021, the tenant was in arrears of utilities in the amount of \$1,195.67. The tenant accumulated additional natural gas charges and copies of the bills were presented as evidence. I asked the landlord to provide details about the usage dates and how he arrived at the totals he seeks compensation for however the landlord was unable to provide accurate testimony as both the copies he was reading from, and the copies provided to me were of poor quality. Both the dates of usage and the amounts due shown on the bills were illegible to the landlord and I. The landlord testified that he keeps his account with Fortis in a credit state, making reading the bills complicated.

The landlord testified that when the tenant moved into the unit back in 2020, there was an antique non-functioning gun mounted on the fireplace. When the landlord went to check on the rental unit on December 11th, the gun was missing. The landlord asked the tenant what happened and the tenant didn't know where it was. The landlord filed a police report and noted the tenant was the last one occupying the house where it was stored. The landlord searched and found what he describes as a similar one at \$7,995.00. No photo of the similar gun was provided, only a URL to a website.

The landlord seeks \$4,340.00 to clean up the residential property. When I asked the landlord how he arrived at the figures, the landlord responded the tenant did not clean the property or leave it in good shape. There were costs to steam carpets, clean walls, and undertake to re-rent it. He had to wash windows inside and out and clean the fireplace. In the yard, the landlord justified it as needing to rake leaves, remove branches and make the unit showable for a future renter. Furniture was left throughout and not taken away by the tenant. Garbage was also left behind.

The landlord acknowledges he did not do a condition inspection report with the tenant at the end of the tenancy. The landlord testified the tenant would not show up for one. The landlord testified that he asked the tenant to come on December 12th, but this was not in writing. The landlord did not provide the tenant with any written notices to attend for condition inspection report. Subsequently, the landlord did not fill out the condition inspection report to show the condition of the rental unit at the end of the tenancy in comparison to the condition at the beginning of the tenancy or provide a copy to the tenant.

The tenant gave the following testimony. He acknowledges he did not pay rent for the months of October or November. He vacated the unit on November 7th, and he asked the landlord to be a reference for him. He was fully gone by November 15th but left “stuff” behind to be taken away by the city. The tenant never communicated in writing that he was ending the tenancy but argues that the landlord was aware because the landlord was showing the unit in November.

The tenant testified he had discussions with the landlord via text saying he wanted the landlord to serve him with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities “so *that I would be broken away*” from the fixed term. The tenant testified the landlord did not want to serve him with one and the argument went back and forth. Eventually he was served with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on December 11 or 12. After receiving the notice to end tenancy, the tenant hired a security company to monitor the tenant’s former rental property.

Regarding the loan, the tenant acknowledges he got behind in paying his rent during covid. The landlord’s solution of a payment plan seemed reasonable. The tenant made payments against the loan every month until the end of October.

Regarding the utilities, the tenant acknowledges he owed approximately \$1,200.00 as of mid-October. He paid the landlord \$200.00 to make it an even \$1,000.00 on December 20th.

Regarding the gun, the tenant testified that he told the landlord not to post pictures of the unit with the decorative gun visible. The tenant had not been occupying the rental unit as of mid-November, so somebody must have taken it. It was there when he vacated the rental unit and the tenant testified he gave a statement to the police for their report. The tenant argues that the gun depicted in the website used by the landlord as a similar gun is not the same as the missing gun. The landlord's was decorative and not functional. The gun on the website has to be registered.

Regarding clean up, the tenant testified that the carpets were decades old. It was not in perfect shape. When he left in mid-November, the rental unit was in good shape, however it likely got worse after he left and the landlord viewed it. During the tenancy, the fence came down and the landlord told the tenant to call the city to fix it. The landlord disabled the garage door opener, making it impossible for the tenant to put the discarded furniture out for the city to collect it. Since he no longer had access, he couldn't follow up on its removal.

Analysis

Under the Act, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

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.

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the Act or Tenancy Agreement

3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The landlord provided a copy of the tenancy agreement which confirms the tenant was obligated to pay rent in the amount of \$3,400.00 per month on the first day of each month. The tenant acknowledged to me that he didn't pay rent for the months of October or November of 2021. While the tenant argues that he vacated the rental unit in mid-November, the tenant did not serve the landlord with anything in writing to establish his intent to end the tenancy as required under section 45 of the *Act*. Consequently, the tenant is obligated to compensate the landlord with rent for both October and November. **[\$6,800.00]**

Both the landlord and tenant testified that the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities upon the tenant on or about December 12th when a copy of the notice was posted to the door of the rental unit. Pursuant to sections 88 and 90 of the *Act*, the notice is deemed served on December 15, 2021, three days after it was posted to the tenant's door. The earliest effective date for the notice to end tenancy would be 10 days later, or December 25, 2021. Accordingly, I deem the tenancy ended on December 25, 2021, pursuant to section 44(1)(f). The tenant is responsible for compensating the landlord with rent from December 1 to December 25, 2021 $[\$3,400.00/31 \text{ (days)} \times 25 \text{ (days)} = \mathbf{\$2,741.93}]$

Residential Tenancy Branch Policy Guideline PG-3 [claims for rent and damages for loss of rent] describes situations where a tenant continues to occupy a rental unit after the tenancy has ended:

B. Overholding tenant and compensation

Section 44 of the *RTA* (section 37 of the *MHPTA*) sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the *RTA* (section 50(3) of the *MHPTA*). This includes compensation for the use and occupancy of the unit or site on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant's occupancy of the unit or site.

The landlord testified that the tenant's belongings remained at the rental unit until January 10th. The tenant did not dispute this testimony but argued that the landlord did not provide access for him to remove the remainder of his belongings which was the large items he wanted to dispose of with the city. A landlord is not required to provide access to a property to a past tenant after the end of a tenancy. It is the responsibility of the tenant to ensure all their belongings are removed before tenancy ends.

Consequently, I determine that the tenant was overholding the rental unit until January 10th and the landlord is entitled to compensation from December 26, 2021, to January 10, 2022, a period of 15 days [$\$3,400.00/31 \times 15 = \$1,645.16$]

Section 62 states:

Director's authority respecting dispute resolution proceedings

- 62** (1) Subject to section 58, the director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

The landlord seeks compensation from the tenant for repayment of a loan made to the tenant. The terms of this loan include interest at 12%. While I accept that the purpose of this loan was to repay rent, this loan arrangement was made outside the terms of the tenancy agreement and outside the Residential Tenancy Act or Residential Tenancy Regulations. As such, I find do not have the authority to resolve this portion of the landlord's application and I must decline jurisdiction to make a decision. **Jurisdiction declined.**

Both the landlord and the tenant agree that as of October 15, 2021, the tenant was in arrears for utilities of \$1,195.67. The landlord acknowledges receiving \$229.42 from the tenant on December 20, 2021. [$\$1,195.67 - \$229.42 = \$966.25$]. During the hearing, the landlord was unable to advise me the dates of usage for the additional bills presented, as the bills were not legible. I find the landlord has provided insufficient evidence to establish the full extent of the additional utility bills he seeks, (point 3 of the 4-point test) and I award the landlord the simple sum of **\$966.25** as agreed to by the tenant.

To claim for compensation under section 7 of the Act, the landlord must first establish that the tenant failed to comply with the Act, regulations or tenancy agreement. While I accept that the landlord's gun that went missing, the landlord did not establish which

section of the Act was violated by the tenant. (point 2 of the 4-point test) Although the landlord was clear in not accusing the tenant of stealing the gun, the landlord has presented insufficient evidence to show that the tenant was responsible for its loss or that the tenant committed any violation of the Act. Moreover, in evidence, the landlord provided screenshots from a website said to depict a gun similar in nature to the one lost. The landlord did not provide any written evaluation of the missing gun from a qualified person with expertise on guns to provide a comparison of the replacement gun for me to evaluate. Based on this lack of sufficient evidence, I cannot determine the gun's value. It is the responsibility of the applicant to provide the evidence to sufficiently establish the value of the loss they claim (point 3 of the 4-point test). I find the landlord has failed on both points 2 and 3 and I dismiss this portion of the landlord's claim.

The landlord provided a bill from the landlord's own company to substantiate a claim of \$4,340.00 for "clean up" of the rental unit. When I repeatedly asked the landlord to explain how he came to the figures he claims, the landlord listed off what was done, without advising me how many hours were spent cleaning the property, how many people it took, or at what rate of pay. The amounts claimed appeared to be arbitrarily decided upon by the landlord without any verification or documentation. Further, while the landlord provided a few photos of the condition of the exterior of the rental unit at the end of the tenancy, no photos of the inside of the rental unit were provided. More importantly, the landlord did not perform a condition inspection report with the tenant at the end of the tenancy. It is the landlord's responsibility to schedule one, pursuant to section 17 of the Regulations.

Section 21 of the Regulations state that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. Based on the lack of a condition inspection report done at the end of the tenancy and lack of photos inside the rental unit, I cannot determine the tenant didn't leave the rental unit reasonably clean and undamaged except for reasonable wear and tear, as required by section 37 of the Act. The landlord's claim for cleaning is dismissed without leave to reapply.

As stated previously, it is the landlord's responsibility to offer the tenant two opportunities for a condition inspection. If the tenant is not available at the first offered date, the landlord must propose a second opportunity by providing the tenant with a notice in the approved form pursuant to section 17 of the Regulations. During the

hearing, the landlord acknowledged he did not comply with section 17 of the Regulations at the end of the tenancy.

Section 38 states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

...

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Pursuant to section 44, I found the tenancy ended on December 25, 2021. The landlord acknowledges receiving the tenant's forwarding address via email on December 12, 2021. The landlord filed his application for dispute resolution seeking to retain the security deposit on March 24, 2022. Based on these facts, I find the landlord did not comply with section 38(1). In accordance with section 38(6), the landlord must pay the tenant double his security deposit of \$1,700.00, a sum of **(\$3,400.00)**.

The landlord's claim was partially successful and I order that the filing fee be recovered by the landlord pursuant to section 72.

Item	Amount
October and November 2021 rent	\$6,800.00
December 1 to December 25, 2021 rent	\$2,741.93
December 26, 2021, to January 10, 2022 overholding compensation	\$1,645.16
utilities	\$966.25

Filing fee	\$100.00
Less security deposit (doubled)	(\$3,400.00)
Total	\$8,853.34

Conclusion

Pursuant to section 67 of the Residential Tenancy Act, I issue a monetary order in the landlord's favour in the amount of \$8,853.34.

I decline jurisdiction to rule on repayment of the loan agreement made between the parties.

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: November 23, 2022

Residential Tenancy Branch