



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damages to the unit and an order to retain a portion of the security deposit in full satisfaction of the claim.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain a portion of the security deposit in full satisfaction of the claim?

Background and Evidence

The tenancy began on February 14, 2006. Current rent in the amount of \$2,995.00 was payable on the first of each month. A security deposit of \$1,300.00 was paid by the tenant. The tenancy ended on January 31, 2013.

The parties agreed a move-in and move-out condition inspection report was completed. At the move-out inspection the tenant did not agree that the report fairly represented the condition of the unit at the end of the tenancy.

The landlord's claims as follows:

a.	Cleaning costs of inside rental unit	\$ 300.00
b.	Blind cleaning	\$ 400.00
c.	Balcony and garage cleaning	\$ 120.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 870.00

Cleaning costs of inside rental unit

The landlord's agent testified that the tenant did not clean the rental unit at the end of the tenancy and it took 12 hours to clean the unit. The agent stated to prove her claim she has a receipt. Filed in evidence is a receipt. Filed in evidence are photographs of the unit. Filed in evidence is a receipt for replacing the flooring.

The tenant testified that he hired a maid service to clean the unit and it was left clean at the end of the tenancy. The tenant denied the landlord was required to do any cleaning. The tenant questioned the validity of the cleaning invoice as the unit was to be fully painted and the flooring was replaced at the end of the tenancy.

Blind cleaning

The landlord's agent testified that the tenant failed to clean the blinds at the end of the tenancy and it cost her \$320.88 plus taxes to have the blinds cleaned. Filed in evidence are photographs of the blinds. Filed in evidence is a receipt.

The tenant agreed that the blinds were not cleaned at the end of the tenancy.

Balcony and garage cleaning

The landlord's agent testified that the balcony required special cleaning as there was a blackberry bush growing on the deck, which the balcony is three stories off the ground. The landlord stated that there are no other blackberry bushes growing on or near the building. Filed in evidence are photographs of the balcony.

The tenant testified that there was a blackberry bush growing from the decking on the balcony. The tenant stated he did not notify the landlord and did not attempt to remove the bush when he vacated the unit.

The landlord's agent testified that the tenant failed to clean an area in the garage and that area was required to be cleaned. Filed in evidence is a photograph of the garage.

The landlord's agent testified that the garage floor and balcony were both required to be power washed. The landlord seeks to recover the amount of \$120.00 to have the balcony and garage cleaned and power washed.

The tenant testified that the entire garage was cleaned, except for an area under two dressers, which could have been easily cleaned by sweeping. The tenant stated he is not responsible for any power washing of the garage floor or balcony.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 37 of the Act, the tenant is required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Cleaning costs of inside rental unit

The evidence of the landlord was that it took twelve hours to have the unit cleaned and this is supported by a receipt. However, the tenant disputes any additional cleaning was required as he had hired a maid service and questioned the validity of the invoice

as the entire unit was to be fully painted and flooring replaced, this is supported by flooring invoice submitted by the landlord.

The landlord has submitted four photographs which are of, the vent on a microwave oven, the inside corner of a cabinet, the kitchen sink, the window, and the bathtub.

The four photographs submitted into evidence by the landlord do not support that the tenant left the unit unclean, as an example the photograph of the bathtub shows very minor mildew along the edge of the tub and the wall. This process occurs naturally due to reasonable use and the aging process of the caulking. This is normal wear and tear. The tub, faucet and the tiles appear to be reasonably clean. The landlord did not submit any other photographs of the inside of the rental unit to support that the tenant did not return the unit reasonable clean.

While, I accept the landlord paid someone as suggested in the invoice, I find the landlord has failed to prove that the cleaning was required due to the actions of the tenant failing to leave the unit reasonably cleaned. The tenant is not required to pay to have the unit cleaned to a higher standard than required by the Act. I find the landlord has failed to prove that the tenant has violated section 37 of the Act. As a result, the landlord's claim for compensation for cleaning the rental unit is dismissed.

Blind cleaning

Under the Residential Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant is expected to leave the internal window coverings clean when they vacate the unit.

In this case, the evidence of the tenant was that they did not clean the blinds at the end of the tenancy. As a result, I find the tenant breach section 37 of the Act, when they failed to clean the blinds. Therefore, I find the landlord is entitled to compensation for the cost of having the blinds cleaned in the amount of **\$365.80**.

Balcony and garage cleaning

In this case, the photographic evidence support that there was a blackberry bush growing on the balcony, the tenant did not notify the landlord and the bush continued to grow. The tenant did not remove the bush at the end of the tenancy. As a result, I find the tenant breached the Act, when they failed to remove the bush from the balcony.

Further, the tenant acknowledged that they did not clean a small area in the garage and alleges that sweeping this area would be sufficient to make it reasonably clean. The photographic evidence submitted by the landlord support sweeping the area would be sufficient.

The tenant disputed that they are responsible for power washing the garage floor and balcony and believe this to be maintenance of the building.

While, I accept some additional cleaning was required to remove the blackberry bush from the balcony and remove the dust that was left on the garage floor, I do not accept that these two items would make the tenant responsible for the cost of power washing the entire garage floor or the balcony. There was no evidence that the tenant was neglectful by causing stains on either of these surfaces. As a result, the landlord is granted a nominal award for cleaning the balcony and garage in the amount of **\$10.00**.

I find that the landlord has established a total monetary claim of **\$425.80** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of **\$425.80** from the security deposit and interest (\$1,342.21) in full satisfaction of the claim and I grant tenant an order under section 67 for the balance due of **\$916.41**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court should the landlord failed to return the balance due to the tenant.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted a formal order for the balance due.

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 30, 2013

Residential Tenancy Branch

