



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ARGUS PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

MNR, MND, FF

### **Introduction**

This Dispute Resolution hearing was set to deal with an Application by the landlord to retain the tenant's security deposit and a monetary order for utilities, cleaning, keeping the key fob and an NSF charge.

The applicant was present and participated in the hearing. Despite being served with the Notice of Hearing documents by registered mail sent on May 28, 2013, neither respondent appeared and the hearing was therefore conducted in the tenant's absence.

### **Issue(s) to be Decided**

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages or loss?

### **Background and Evidence**

The landlord testified that the fixed term tenancy began on April 1, 2012 and ended on March 31, 2013. A security deposit of \$450.00 was paid and the current rent was \$880.00.

The landlord submitted into evidence copies of the move-in and move-out condition inspection reports signed by the tenants, copies of communications, a copy of the tenancy agreement, a copy of the "Move-Out Statement" and a list of expenditures that are being claimed.

The move-out condition inspection report verified that the tenant agreed to pay \$200.00 for general cleaning, \$112.00 for carpet cleaning, \$149.93 for cleaning the blinds and \$45.00 for an unreturned fob and that the landlord could utilize the tenant's security deposit for this purpose.

The landlord testified that, on April 9, 2013, the tenant was sent a demand letter listing the actual costs for damages including

- \$25.00 NSF Fee for March rent
- \$112.00 for carpet cleaning
- \$129.93 for Blind Cleaning
- \$200.00 for Suite Cleaning
- \$45.00 for Damages for Unreturned Fob
- \$413.16 for Unpaid Utilities

The total amount being claimed against the tenant's security deposit is \$925.09, leaving \$475.09 owed in excess of the deposit.

The tenancy agreement indicated that the tenant is responsible for paying electricity and heat and placing the accounts in their own names. The landlord testified that the utility accounts were in the tenant's name but, because the final bills were left unpaid, the municipality automatically transferred the debt to the landlord's tax bill. No copy of the utility company or municipal invoices were in evidence.

### **Analysis**

In regard to the claims that were accepted by the tenant in the move out inspection report, I find that the landlord is entitled to \$486.93, including \$112.00 for carpet cleaning, \$129.93 for blind cleaning, \$200.00 for suite cleaning and \$45.00 for damages for unreturned fob.

With respect to the additional claims for compensation, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In regard to the monetary claim for utilities, I find that a term in the tenancy agreement clearly makes the tenant responsible for all heat and electricity charges. I find that the tenant must have placed the utility accounts in the tenant's name, received and paid invoices for usage during the tenancy and, before or after moving out, likely received a final billing from the utility companies for the accounts that were in their name.

That being said, I find that the landlord claimed that:

- 1) The utility accounts were left in arrears, and
- 2) The tenant did not pay the final billings, and
- 3) The amounts for the final billings were transferred to the landlord along with the taxes to be paid to the municipality, and
- 4) The utility bills were ultimately paid by the landlord.

However, I find that the landlord did not provide sufficient evidence to prove any of the above claims with respect to the utility charges, to satisfy the test for damages. For this reason I find that the landlord's claim for utility costs must be dismissed.

With respect to the landlord's claim for the N.S.F. fee, I find that the tenancy agreement does contain a provision requiring the tenant to pay a \$25.00 fee for a returned cheque. Although the landlord did not submit a copy of the returned cheque, I find that the move-out statement does indicate the date and an identifying number for the N.S.F. cheque and I accept that the landlord is entitled to be compensated the \$25.00 being claimed.

Accordingly, I find that the landlord is entitled to total monetary compensation of \$561.93, comprised of \$112.00 for carpet cleaning, \$129.93 for blind cleaning, \$200.00 for suite cleaning, \$45.00 for damages for an unreturned fob, \$25.00 for N.S.F. cheque fees and the \$50.00 cost of this application.

I order that the landlord retain the tenant's \$450.00 security deposit, leaving a balance of \$111.93. I hereby grant a monetary order in the amount of \$111.93 to the landlord. This order must be served on the tenant and may be enforced in small claims court if necessary.

The remainder of the landlord's application is dismissed without leave.

**Conclusion**

The landlord is partially successful in the monetary claim and is granted an order to retain the tenant's security deposit and issued a monetary order for the remainder

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: September 03, 2013

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Residential Tenancy Branch

