



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

Code MND, MNSD, FF

Introduction

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

Both parties appeared, gave affirmed 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.

Preliminary Issue

At the outset of the hearing the parties agreed that the tenant has vacated the rental unit and an order of possession is not required.

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 a monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2011 and ended on August 31, 2012. The parties entered into a new fixed term agreement which was to expire on August 31, 2013. Rent in the amount of \$655.00 was payable on the first of each month. A security deposit of \$310.00 was paid by the tenant.

The landlord claims as follows:

a.	Carpet Cleaning	\$ 158.80
b.	Blind Cleaning & broken track	\$ 268.80
c.	Apartment cleaning	\$ 300.00
d.	Hole in ceiling and smoke	\$ 100.00
e.	Locks changed	\$ 78.75
f.	Filing fee	\$ 50.00
	Total claimed	\$ 900.60

Carpet Cleaning

The landlord's agent testified that the tenant did not clean the carpets at the end of the tenancy and they were required to have the carpets cleaned. Filed in evidence is a receipt for carpet cleaning in the amount of \$147.00.

The tenant testified that he did not clean the carpets prior to vacating.

Blind Cleaning & broken track

The landlord's agent testified that the tenant did not clean the blinds at the end of the tenancy and they were required to have the blinds cleaned. Filed in evidence is a receipt for blind cleaning and broken track in the amount of \$226.80.

The tenant testified he did not have the blinds cleaned. The tenant stated that the amount claimed to clean the blinds appears to be high.

Apartment cleaning

The landlord's agent testified that when the tenant vacated the premises that they did not clean the rental unit or any of the appliances and there was a large amount of garbage left behind. The landlord stated that it cost them \$300.00 to have the unit cleaned as it took the cleaner twelve hours to clean the unit at the rate of \$25.00. Filed in evidence are photographs dated September 3, 2013.

The tenant testified that he had not planned to vacate the unit on August 31, 2013, as he thought he had until September 1, 2013. The tenant stated that he had to change his plans. The tenant stated he does not believe that it took twelve hours to clean the unit.

Hole in ceiling and smoke

The landlord's agent testified that the tenant had caused damage to the ceiling, by what appeared to be from the end of broomstick being hit on the ceiling and going through

the drywall. The landlord's agent stated that the walls of the rental unit also required addition scrubbing as the tenant was smoking in a non smoking unit.

The tenant testified that he is not sure how the hole in the ceiling occurred, but does not deny the damage was caused during the tenancy. The tenant stated that he was smoking in the rental unit.

Locks changed

The landlord's agent testified that they changed the locks to the rental unit on August 31, 2013 at 1:00 pm as the tenancy ended by the fixed term agreement and the tenant has failed to move. The landlord seeks to recover the amount of \$78.75.

The tenant testified that the landlord had changed the locks prior to him vacating the unit. The tenant stated that he was not expecting the landlord to enter his unit, take picture or change the locks. The tenant stated restated that he though he had until September 1, 2013, to vacate.

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 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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(s) 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.

Carpet 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 generally expected to clean the carpets if vacating after a tenancy of one year.

In this case, the parties agreed the tenant did not clean the carpets. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the carpets at the end of the tenancy. Therefore, I find the landlord is entitled to compensation for the cost of having the carpets cleaned in the amount of **\$147.00**.

Blind Cleaning & tracks

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 he or she vacates. The tenant is expected to clean the internal window coverings at the end of the tenancy regardless of the length of the tenancy where he or she, or another occupant smoked in the premises.

The evidence of the tenant was that he did not have the blinds cleaned at the end of the tenancy and did not deny smoking in the rental unit. As a result, I find the tenant has breached section 37 of the Act, when they failed to clean the blinds at the end of the tenancy. Therefore, I find the landlord is entitled to compensation for the cost of having the blinds & track cleaned in the amount of **\$226.80**.

Apartment cleaning

The evidence of the landlord's agent was the tenant did not clean the rental unit or any of the appliances and there was a large amount of garbage left behind. The tenant did not dispute the landlord's allegation. The photographs dated September 3, 2013, support this position. As a result, I find the tenant has violated the Act, when they failed to clean the rental unit.

While the tenant did not dispute the unit was left unclean, the tenant questioned the hours it took to clean the unit.

In this case, the landlord did not file a copy of the invoice, however, I find based on the photographs that it was very probable that it took twelve hours to clean the unit, as the entire rental unit needed to be cleaned, which included removing food, and other items from the unit. It also included cleaning the appliances. Therefore, I find the landlord cost was reasonable and is entitled to compensation in the amount of **\$300.00**.

Hole in ceiling and smoke

The evidence of the landlord's agent was that tenant caused damage to the ceiling, by what appeared to be from the end of broomstick being hit on the ceiling and going through the drywall. The evidence of the tenant was that he is not sure how the damage occurred, but admits it happened while he had possession of the unit. I find the tenant breached the Act, when they failed to repair the damage ceiling.

The evidence of the landlord's agent was that the walls of rent unit had to be scrubbed due to the tenant smoking and this amount was included in the invoice for the ceiling repair. However, the landlord has not filed a copy of the invoice.

While I have found the tenant breached the Act, when he failed repair the ceiling. I am not satisfied that the walls were not already cleaned in the twelve hours of compensation the landlord has been previously granted, as the landlord failed to provide an invoice detailing the work performed. Therefore, I grant the landlord a nominal amount for repairing the ceiling in the amount of **\$20.00**.

Locks changed

The evidence of the landlord's agent was that they changed the locks on August 31, 2013 at 1:00 pm as the tenancy had ended based on the fixed term agreement. The evidence of the tenant was that he had not vacated the rental unit and should not be responsible for the landlord changing the locks prior to him vacating the unit. The tenant stated that he was not expecting the landlord to enter his unit, take picture or change the locks.

Under section 57 of the Act, if a tenant continued to occupy a rental unit after the tenancy has ended, the tenant is considered to be overholding. The landlord must not take possession of the rental that is occupied, unless the landlord has a writ of possession issued by the Supreme Court.

I find the landlords action of changing the locks, while the tenant was still occupying the rental unit was premature and a violation of the Act. Therefore, I find the tenant is not responsible to compensate the landlord for changing the locks prior to the tenant vacating the unit. I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$743.80** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlords retain the security deposit and interest of **\$310.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$433.80**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord 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: October 30, 2013

Residential Tenancy Branch

