



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 AMOS REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for compensation for damage or loss under the *Act* pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenants' security deposit in satisfaction of this claim pursuant to sections 38 and 67 of the *Act*; and
- recovery of the filing fee for this application from the tenants pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 1:55 p.m. in order to enable the tenants to call into this teleconference hearing scheduled for 1:30 p.m. The agent for the property management company hired to manage the rental unit (herein referred to as "the landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

As only the landlord attended the hearing, I asked the landlord to confirm that he had served the tenants with the Notice of Dispute Resolution Proceeding package and the landlord's evidence for this hearing. The landlord testified that the Notice of Dispute Resolution Proceeding package, including the landlord's Application for Dispute Resolution and evidentiary materials was served individually to each of the two named tenants by Canada Post registered mail on February 25, 2019. The landlord provided

the registered mail tracking numbers, which I have recorded on the cover sheet of this decision, as proof of service.

As such, I have applied the deeming provisions of section 90 of the *Act* to find that the tenants were served the documents for this hearing on March 2, 2019, the fifth day after mailing, in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for compensation for damage or loss?

Is the landlord entitled to retain a portion of the security deposit in satisfaction of this loss?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into documentary evidence by the landlord, confirming that this tenancy began January 1, 2018 as a fixed-term tenancy set to end on December 31, 2018. The tenancy continued on a month-to-month basis until the tenancy ended on January 31, 2019 when the tenants vacated the rental unit.

Monthly rent, payable on the first of the month, was \$1,320.00. The tenants paid a security deposit of \$660.00 at the beginning of the tenancy.

The landlord's claim sought to withhold a portion of the security deposit for cleaning deficiencies as follows:

Item	Amount
Furnace filter	\$22.09
Cleaning	\$315.00
Total Monetary Award for Damages	\$337.09

The landlord testified that the tenants left the rental unit "dirty" and failed to replace a furnace filter. This resulted in the landlord incurring cleaning costs and the cost of a replacement furnace filter for which the landlord is seeking compensation.

The landlord testified that at least one of the tenants participated in both the move-in and move-out condition inspections. The landlord acknowledged that the tenants did not agree with the landlord's condition assessment at move-out, however, the tenants did not attend the hearing to provide their version of events or evidence, as such I have only the unchallenged testimony and evidence of the landlord before me.

In support of this testimony, the landlord submitted photographic evidence of the condition of the rental unit at move-in and move-out, a condition inspection report signed by both the landlord and tenants at move-in and move-out, an email from the cleaner listing the cleaning deficiencies addressed, the cleaning cost invoice and a receipt for the replacement furnace filter.

Analysis

Section 67 of the *Act* provides that, where an arbitrator has found that damages or loss results from a party not complying with the *Act*, regulations, or tenancy agreement, an arbitrator may determine the amount of that damage or loss and order compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the other party. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to section 7(2) of the *Act*.

In this case, the landlord has claimed for compensation for cleaning costs and furnace filter replacement.

I have addressed each of these claims separately below.

Cleaning Costs

Section 37(2) of the *Act* sets out the requirements for a tenant to fulfill when vacating the rental unit, as follows, in part:

- 37(2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear,...

Based on the testimony and evidence submitted by the landlord in support of their claim, I find that there is sufficient evidence that the tenants failed to leave the rental unit reasonably clean at the end of the tenancy as required by 37(2) of the *Act*.

Therefore, I find that the claimant has shown that the damage or loss claimed stemmed directly from a contravention of the *Act* by the other party. I find that the claimant has established the amount of the loss claimed through the submitted invoice, and that the loss claimed reflects a reasonable cost for the work completed, thereby demonstrating the claimant's duty to mitigate the loss claimed.

For these reasons, based on a balance of probabilities, I find that the landlord has met the burden for proving his claim for damage or loss through the test required for compensation pursuant to section 67 of the *Act* as explained at the beginning of the "Analysis" section of this Decision. As such, I find that landlord is entitled to a monetary award for the cleaning costs of \$315.00.

Furnace Filter Replacement

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises clarifies the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property, and obligations with respect to services and facilities. On pages 4 and 5, this Guideline notes:

FURNACES

1. The landlord is responsible for inspecting and servicing the furnace in accordance with the manufacturer's specifications, or annually where there are no manufacturer's specifications, **and is responsible for replacing furnace filters**, cleaning heating ducts and ceiling vents as necessary.
2. The tenant is responsible for cleaning floor and wall vents as necessary.

[My emphasis added]

As such, in accordance with the above-noted Guideline, I find that the tenants did not contravene the *Act* or tenancy agreement by failing to replace the furnace filter as that is a responsibility of the landlord. Therefore, I find that the landlord is not entitled to claim for this cost and I dismiss the landlord's claim for \$22.09 for the furnace filter replacement.

Set-off Against Security Deposit

In summary, I find that the landlord is entitled to a monetary award of \$315.00.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

As such, I issue a monetary award in the landlord's favour totalling \$415.00.

The landlord continues to retain the tenants' \$660.00 security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I set-off the total amount of compensation owed by the tenants to the landlord of \$415.00, against the tenants' \$660.00 security deposit held by the landlord, in full satisfaction of the monetary award granted to the landlord.

The landlord is ordered to return the remainder of the security deposit of \$245.00 to the tenants as the landlord has no entitlement to the remainder of the security deposit.

As an enforcement of this order, I issue a Monetary Order in the tenants' favour of \$245.00.

A summary is provided below:

Item	Amount
Security deposit held by landlord	\$660.00
LESS: Total monetary award in favour of landlord	(\$415.00)
Portion of security deposited ordered returned to tenants	\$245.00

Conclusion

I issue a monetary award to the landlord of \$415.00 to be deducted from the security deposit.

I order the landlord to return the remainder of the security deposit of \$245.00 to the tenants. As an enforcement of this order, I issue a Monetary Order to the tenants in the amount of \$245.00.

The tenants are provided with this Order in the above terms. Should the landlord fail to comply with this Order, the tenants are required to serve this Order on the landlord and this Order may be filed in the Small Claims Division of the Provincial Court, where it will be 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: June 21, 2019

Residential Tenancy Branch