



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY21 MAX REALTY LTD. / Y5ZONE PROPERTY
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order for the return of the security deposit and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant and the landlord were represented by their agents. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on October 09, 2017 and ended on August 31, 2018. Prior to moving in the tenant paid a security deposit of \$1,000.00. The landlord agreed that he received the tenant's forwarding address on September 21, 2018. The tenant agreed that he had received \$500.00 from the landlord for the partial return of the security deposit of \$1,000.00.

The landlord testified that he had set up an appointment with the tenant to carry out a move out inspection on the last day of tenancy which was August 31, 2018. The landlord stated that when he arrived at the rental unit, he found that the tenant had moved out and was not present for the inspection. The landlord proceeded to carry out the inspection in the absence of the tenant and took photographs to document the condition of the unit.

The landlord stated that the unit was covered in grease that appeared to have come out of the hood fan located above the stove. The tenant stated that the motor of the fan had broken down and caused the fan to spew grease all over the stove and the surrounding areas. The tenant requested additional time to clean the unit and stated that he did so by September 04, 2018 at which time he returned the keys to the landlord.

The tenant testified that he received a cheque in the amount of \$500.00 which was the balance of the security deposit after the landlord made a deduction of \$500.00 for repairs to the hood fan. The tenant stated that he did not agree to the deduction because the breakdown of the hood fan was from wear and tear and not negligence on the part of the tenant.

Attempts were made to mediate the matter but were not successful. The tenant offered to accept the balance of the security deposit of \$500.00 in full settlement of his claim. The landlord maintained that the cost of repairs was in excess of the deposit of \$1,000.00 and rejected the tenant's offer.

I explained to the landlord that in regard to the landlord's claims relating to loss that he may have suffered, I am not able to neither hear nor consider the landlord's claim during these proceedings as this hearing was convened solely to deal with the tenant's application.

Analysis

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address on September 21, 2018. I accept the tenant's undisputed evidence that he did not agree to the landlord retaining any portion of the security deposit. I further find that the landlord failed to repay the security deposit in full or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The security deposit is held in trust for the tenant by the landlord. The landlord may only keep all or a portion of the security deposit through the authority of the *Act*, such as the written agreement of the tenant or an Order from an Arbitrator.

If the landlord believes he is entitled to monetary compensation from the tenant, he must either obtain the tenant's consent to such deductions or obtain an Order from an Arbitrator authorizing him to retain a portion of the tenants' security deposit. Here the landlord did not have any authority under the *Act* to keep any portion of the security deposit.

Having made the above findings, I must Order, pursuant to sections 38 and 67 of the *Act*, that the landlord pays the tenant double the amount of the security deposit paid.

The tenant paid a security deposit of \$1,000.00. Therefore, the landlord must now return \$2,000.00 which is double this amount to the tenant. I find that the tenant has received \$500.00 of the deposit and therefore the landlord must pay to the tenant \$1,500.00. The tenant is successful in his application and therefore I award the tenant the recovery of the filing fee of \$100.00.

The tenant has established a total claim of \$1,600.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,600.00**.

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 08, 2019

Residential Tenancy Branch