



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

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

- a monetary order for unpaid utilities and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. As the tenant confirmed that they received a copy of the landlord's dispute resolution hearing package sent by registered mail in September 2018, I find that the tenant was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's relevant written evidence in advance of this hearing, I find that the written evidence was served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The parties entered into a fixed term Residential Tenancy Agreement (the Agreement) on August 8, 2017 for the lower level of a two-unit residence. The fixed term was to run from September 15, 2017 until September 30, 2018. Monthly rent was set at \$1,400.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$700.00 security deposit paid by the tenant on September 7, 2017.

According to section 44 of a copy of the Agreement entered into written evidence by the landlord, the tenant was also responsible for 25% of the heating oil, hydro and water costs for this two unit residential rental property. Although there was some confusion relating to different wording in copies of the Agreement entered into written evidence by the parties, the tenant confirmed that they were responsible for 25 % of the oil, hydro and water costs for this property. .

This tenancy ended on August 31, 2018, at which time the parties participated in a joint move-out condition inspection of the premises. At that time, the tenant signed the landlord's Security Deposit Statement portion of the landlord's joint move-out condition inspection report, indicating that the tenant authorized the landlord to retain the tenant's \$700.00 security deposit in partial satisfaction of a total of \$1,442.00 that the landlord identified on that Statement as owing for unpaid utilities and carpet cleaning.

The tenant sent the landlord an email on September 12, 2018 requesting the return of all of the tenant's security deposit. The tenant asserted in that email that they had not given the landlord authorization to retain any portion of the security deposit. The tenant reiterated this request in their written evidence, citing a 2008 decision of a then dispute resolution officer who referenced two sections of the then Residential Tenancy Policy Guidelines Manual that at that time apparently provided guidance to dispute resolution officers. The tenant also entered into written evidence a statement that they were given no option but to sign the August 31, 2018 Security Deposit Statement prepared by the landlord at the joint move-out condition inspection and that they did so under duress.

The landlord applied to retain the security deposit as part of an application for a monetary award of \$1,442.00 on September 14, 2018. This amount was based on a request for the payment of \$1,302.00 for unpaid utilities owed by the tenant during the course of this tenancy, and \$140.00 for professional carpet cleaning at the end of this tenancy. The landlord also requested recovery of the \$100.00 filing fee for their application. In their written evidence and at the hearing, the landlord reduced the amount of the monetary award they were seeking to \$490.71 plus the \$100.00 filing fee, in addition to authorization to retain the security deposit.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The tenant agreed to pay the landlord a total of \$540.71, to be paid in equal monthly instalments commencing on February 15, 2019.
2. The tenant agreed to allow the landlord to retain the tenant's \$700.00 security deposit.
3. Both parties agreed that this settlement agreement constituted a final and binding resolution of the landlord's application and all issues in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion having been applied.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$540.71. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above settlement.

To implement the terms of the parties' settlement agreement, I order the landlord to retain the tenant's security deposit.

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: January 03, 2019

Residential Tenancy Branch