



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause; for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord's agent advised that the tenant is no longer residing in the rental unit, and therefore, the landlord withdraws the application for an Order of Possession. The landlord's agent also withdraws their application for a Monetary Order for damage to the unit and for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served in person on March 04, 2015.

The landlord's agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord's agent (the landlord) testified that this tenancy started on February 01, 2013 for an initial term of one year. The tenancy then reverted to a month to month tenancy. Rent for this unit was \$850.00 per month due on the 1st of each month. The tenant paid a security deposit of \$425.00 on January 08, 2013. The landlord and tenant attended a move in inspection of the property at the start of the tenancy. At the end of the tenancy the tenant did not attend the move out inspection despite two opportunities to do so. The landlord completed the inspection in the tenant's absence but has been unable to send the tenant a copy of the report as the tenant has not provided the landlord with a forwarding address in writing.

The landlord testified that after serving the tenant with a One Month Notice to End Tenancy for cause on February 10, 2015 the parties then reached a mutual agreement to end the tenancy on March 07, 2015. The landlord agreed to return \$350.00 of the tenants rent paid for March to the tenant if the tenant agreed to vacate on March 07, 2015. This sum was returned to the tenant upon signing of the agreement; however, the tenant breached the agreement and did not vacate the rental unit until March 17, 2015. The landlord therefore seeks to recover the \$350.00 returned to the tenant.

The landlord seeks an Order to keep the security deposit as the tenant failed to attend the move out inspection. The landlord also seeks to recover the filing fee of \$50.00.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. With regard to the landlord's claim to recover the rent returned to the tenant of \$350.00. I have reviewed the mutual agreement to end tenancy. This agreement has been signed by the tenant and the landlord. The tenant agreed to vacate the unit on or before March 07, 2015. The landlord agreed to return \$350.00 to the tenant from the partial rent paid for March. The tenant failed to comply with this agreement and did not vacate the rental unit until

March 17, 2015. I therefore find as the agreement was breached by the tenant that the landlord is entitled to recover the \$350.00 from the tenant to cover the rent for that period.

With regard to the landlord's claim to keep the security deposit; I refer the parties to s. 35(2) of the *Act* which provides for the opportunities that the landlord must give the tenant to attend the move out inspection of the rental unit. This section states:

(2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

I am satisfied that the landlord did offer the tenant two opportunities to attend a move out inspection and the tenant declined to attend. The inspection was therefore completed in the tenant's absence by the landlord.

Section 36(1) of the *Act* provides for the consequences if a tenant does not attend the inspection after the landlord has given the tenant two opportunities to attend. It states:

36 *(1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if*

(a) the landlord complied with section 35 (2) [2 opportunities for inspection], and

(b) the tenant has not participated on either occasion.

Consequently I find the tenant has extinguished their right to the return of the security deposit of \$425.00. I therefore Order that the landlord retain this amount pursuant to s. 38(4)(b) of the *Act*. As the landlord has applied to retain the security deposit I must offset the loss of rent from the security deposit.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent	\$350.00
Filing fee	\$50.00
Subtotal	\$400.00

security deposit	\$425.00
Offset security deposit balance remaining due to the landlord	\$25.00

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$25.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

The landlord is at liberty to file a new application for any sections of this claim which have been withdrawn at the hearing today.

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: March 23, 2015

Residential Tenancy Branch

