



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and two agents representing the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for double the amount of the security deposit, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of the tenancy agreement signed by the parties November 4, 2002 for 1 year fixed term tenancy beginning on December 1, 2002 that converted to a month to month tenancy on December 1, 2003 for a monthly rent at the start of the tenancy of \$1,875.00 due on the 1<sup>st</sup> of each month with a security deposit of \$940.00 paid on November 1, 2002.

The tenancy ended on or before February 28, 2011 when the tenants vacated the rental unit. The tenant testified that she provided the landlord with her forwarding address on a piece of paper on the day the move out condition inspection was completed and again by letter on March 30, 2011.

The landlord testified that the tenants never did attend a move out condition inspection despite attempts, on two occasions, by the landlord to set a mutually agreed upon appointment time with the tenant, the tenant refused to agree to a time. As such, the landlord issued a "Notice of Final Opportunity to Schedule a Condition Inspection" and posted it on the tenant's door on February 25 at 3:30 p.m. for an 11:00 a.m. appointment on February 28, 2011.

The tenant testified that she and her family had the rental unit ready at 11:00 a.m. on February 28, 2011 but that the landlord did not attend. The tenant testified that she and her family waited for 4.5 hours until 3:30 p.m. for the landlord to attend. The tenant testified that she had been told there was an emergency problem with the elevator.

The landlord's agent testified that he attended the rental unit at 11:00 a.m. at which time the tenants' son asked if they could have a couple of extra days to complete the cleaning and move out as he had just arrived from out of the country. The landlord told him that they must complete the inspection that day.

The tenant testified that she did not know if her son spoke to the landlord at 11:00 a.m. that day and that her son was currently out of the country and could not be reached for this hearing.

The landlord submitted a copy of a move out Condition Inspection Report that is unsigned by the tenant and in fact stipulates that the tenant did not attend or provide a forwarding address during the move out inspection.

### Analysis

To be successful in a claim, the party making the claim must provide sufficient evidence to establish their position. When the responding party provides testimony that disputes the applicant's position the burden of proof remains with the applicant.

In this case the burden is on the tenant to provide sufficient evidence to establish that she attended the move out condition inspection. In the absence of a move out Condition Inspection Report signed by the tenant and in the absence of any corroborating evidence or testimony, I find the tenant has failed to meet the burden of proof to establish that she attended the move out condition inspection.

Section 35 of the *Act* requires a landlord to provide at least two opportunities to the tenant to attend a move out condition inspection report. I accept that the landlord met this requirement and that the landlord provided a third and final opportunity in accordance with the Residential Tenancy Regulation.

Section 36, states the right of a tenant to the return of the security deposit is extinguished if the landlord has complied with Section 35 and the tenant did not participate in the inspection. As I have found the tenant has failed to establish that she

participated in the move out inspection, I find the tenant has extinguished her right to the return of the security deposit.

Conclusion

For the reasons noted above, I dismiss the tenants' Application in its entirety without leave to reapply.

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: August 17, 2011.

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Residential Tenancy Branch