



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND, MNSD, MNDC, FF; MNSD, FF

### Introduction

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

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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 their filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant's application pursuant to the Act for:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1350 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord TB (the landlord) attended the hearing on behalf of both landlords.

### Disposition of Tenant's Application

The tenant's application relates to return of his security deposit in the amount of \$700.00. The landlord testified that the tenant has not satisfied a monetary order of this Branch in the amount of \$700.00 issued 19 June 2015.

Subsection 38(3) of the Act establishes that a landlord may retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the tenant to pay to the landlord. Similarly, paragraph 72(2)(b) of the Act establishes that a landlord may deduct the amount of any order by the Residential Tenancy Branch from a security deposit otherwise due to the tenant.

Further, rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establish the consequences of failing to appear at a hearing at the scheduled time:

**7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, on the basis of subsection 38(3) and paragraph 72(2)(b) of the Act, in the absence of any evidence or submissions from the applicant and in the absence of the applicant's participation in this hearing, I order the tenant's application dismissed without leave to reapply.

Preliminary Issue – Landlords' Evidence

The landlords submitted their evidence on an electronic device. The device contained photographs and a large volume of scanned documents in "Portable Document Format" that were not photographs. The scanned documents included receipts in support of the landlords' monetary claim.

Rule 3.10 of the Rules sets out the requirements for digital evidence:

**3.10 Digital evidence**

Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

At the hearing I informed the landlord that I would not accept this volume of printable documents by way of digital evidence. The landlord was given the option of continuing

without these documents in evidence or withdrawing the landlords' application to reapply at a later date with evidence in the appropriate format.

The landlord elected to withdraw the landlords' claim.

### Conclusion

The tenant's application is dismissed without leave to reapply.

The landlords' application is withdrawn. The landlords may refile their application should they elect to do so. The landlords are cautioned that the two year limitation date established in section 60 of the Act is not extended.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 03, 2016

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Residential Tenancy Branch

