



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Action Property Management  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND, MNSD, FF

### Introduction

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

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord provided documentary evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 15, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

Based on the documentary evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for cleaning of and damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 35, 36, 37, 38, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on January 21, 2015 for a month to month tenancy beginning on January 21, 2015 for the monthly rent of

\$1,100.00 due on the 1<sup>st</sup> of each month with a security deposit of \$550.00 paid. The tenancy ended on November 30, 2015;

- A copy of a Notice of Final Opportunity to Schedule a Condition Inspection scheduling an inspection for November 30, 2015 at 11:30 and the landlord's own notification of two opportunities for dates and times to complete the move out Condition Inspection; and
- A copy of a Condition Inspection Report confirming the tenant did not attend the move out Condition Inspection.

### Analysis

Section 35 of the *Act* requires that the landlord and tenant must complete an inspection of the condition of the rental unit before a new tenant begins to occupy the rental unit on or after the day the tenant ceases to occupy the rental unit or on another mutually agreed upon date. The landlord must offer the tenant at least 2 opportunities with the second offered time being offered in writing and in the approved form.

Section 17 of the Residential Tenancy Regulation stipulates that the landlord must offer a first opportunity to schedule the condition inspection by proposing one or more dates and times. If the tenant is not available at the time proposed the tenant may propose another time that the landlord must consider. If the time proposed by the tenant is not acceptable the landlord must propose a second opportunity by providing the tenant a notice in the approved form. The approved form is available on the Residential Tenancy Branch website.

Section 36(1) of the *Act* states that the right of a tenant to the return of the security deposit or pet damage deposit, or both, is extinguished if the landlord has complied with the requirements set out in Section 35 of the *Act* and Section 17 of the Regulation and the tenant has not participated in the inspection.

Based on the landlord's undisputed evidence I find the tenant failed to participate in the scheduled move out Condition Inspection despite the provision of the landlord's Notice of Final Opportunity to Schedule a Condition Inspection.

As a result, I find the tenant has failed to comply with his obligations under Section 35 and as such the tenant has extinguished his right to the return of the security deposit.

### Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$600.00** comprised of \$550.00 security deposit and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$550.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: July 07, 2016

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Residential Tenancy Branch