



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNSD

### Introduction

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

- an order of possession for cause, pursuant to section 55; and
- authorization to retain all or a portion of the tenant's security deposit, pursuant to section 38.

The tenant did not participate in the conference call hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that on June 23, 2016 she forwarded the landlord's application for dispute resolution via registered mail to the tenant. The landlord provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the application on June 28, 2016, the fifth day after its registered mailing.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit on July 19, 2016. Consequently, the landlord is no longer seeking an order of possession and this portion of the landlord's application is dismissed without leave to reapply.

### Issue(s) to be Decided

Is the landlord authorized to retain all or a portion of the tenant's security deposit?

### Background and Evidence

The landlord testified that this tenancy began on September 1, 2015 on a fixed term basis. Rent in the amount of \$1,900.00 was payable on the first of each month. The tenant remitted \$1,000.00 for the security deposit at the start of the tenancy.

The landlord is seeking to retain the security deposit in the amount of \$1,000.00 to offset damages to the rental unit and yard. The landlord testified that neither a move-in nor move-out condition report was conducted. Although the landlord has not attended the rental unit since the tenant vacated she received reports of the rental unit's condition from her realtor. The landlord plans to attend the rental unit on August 2, 2016, with a cleaner and landscaper to restore the rental unit to its original condition. The landlord has not received the tenant's forwarding address.

### Analysis

Sections 23, 24, 35 and 36 of the *Act* establish that joint move-in and move-out condition inspections must be conducted and reports of inspections must be issued to the tenant. The right of a landlord to claim against the security deposit is extinguished if these report requirements are not met.

In the absence of either a move-in or move-out condition inspection report, I find that the landlord's entitlement to claim against the tenant's security deposit is extinguished. Further to this, as previously noted, the landlord's costs represent "estimates" and are not costs that have been incurred. For these reasons, I dismiss the landlord's application to retain all or a portion of the security deposit without leave to reapply. This dismissal does not preclude the landlord's right under section 67 of the *Act*, to file a monetary claim for damages arising out of the tenancy, including damage to the rental unit.

### Conclusion

The landlord's entire application is dismissed 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: July 29, 2016

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Residential Tenancy Branch

