



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, FF

### Introduction

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

- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing dealt with an Application for Dispute Resolution filed by the landlord on July 9, 2016 and amended on July 21, 2016. The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant.

The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on July 24, 2016. Canada Post tracking information was submitted in the landlord's evidence. Based on the submissions of the landlord, I find the tenant was deemed served notice of this proceeding on July 29, 2016, pursuant to section 90 of the *Act*. Therefore, I continued in the absence of the tenant.

### Issue to be Decided

Is the landlord entitled to retain a portion of the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background, Evidence

The landlord's undisputed testimony is as follows. The tenancy began on April 1, 2007 and ended on June 30, 2016. The tenants were obligated to pay \$1750 per month in rent in

advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The landlord testified that a written condition inspection report was conducted at move in with the participation of the tenants. The landlord testified that despite providing two written opportunities for the tenant to participate in the written condition inspection at move out, the tenants did not attend. The landlord testified that she is seeking to retain the deposit as the tenants have extinguished their right to the deposit by not participating in the move out inspection. In addition, the landlord testified that the tenants left the unit dirty and damaged that will require a significant cost to remedy that far exceeds the security deposit. Also, the landlord testified that a bar fridge and ladder were taken by the tenants without the landlords consent. Furthermore, the landlord testified that the tenants were responsible to maintain the yard but left it overgrown and uncared for. The landlord testified that the tenants left the keys to the unit "hanging from my mailbox on July 1, 2016".

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 35 and 36 of the Act addresses the issue before me as follows:

### **Condition inspection: end of tenancy**

- 35 (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
- (a) on or after the day the tenant ceases to occupy the rental unit, or
  - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- (4) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or

(b) the tenant has abandoned the rental unit.

**Consequences for tenant and landlord if report requirements not met**

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.

Based on the undisputed testimony of the landlord, the extensive documentation submitted by the landlord and in the absence of any disputing evidence from the tenant, I find that the tenant extinguished their right to the security deposit by not participating in the move out condition inspection despite being given two opportunities; the second in writing.

The landlord is entitled to retain the security deposit. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$800.00. I order that the landlord retain the deposit and interest of \$16.75 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$83.25. This order may be filed in the Small Claims Court and 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: January 16, 2017

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Residential Tenancy Branch