



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MICHAEL MARLBOROUGH HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OLC MNSD FF

### Introduction

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

- authorization to obtain a return of his security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act* pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Neither party attended at the appointed time set for the hearing. Rule 10.1 of the Rules of Procedure regarding the commencement of a hearing provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the dispute resolution officer. The dispute resolution officer may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any evidence or submissions, I order the application dismissed without liberty to reapply.**

### Reason to Dismiss without leave to reapply:

At a previous RTB hearing held on September 30, 2016, the landlord's application for a monetary award was heard by this arbitrator. At that time, the tenant did not remain on the line for the entirety of the teleconference. After hearing full evidence from the landlord at that hearing, I made the following determinations, based on the evidence before me,

- the tenancy began on January 11, 2016 and ended February 2, 2016;
- the condition of the unit was in need of cleaning but was habitable;
- the tenant viewed the unit prior to signing the tenancy agreement and again during his move-in condition inspection;

- the tenant did not allow the landlord to make repairs on the rental unit;
- the tenant failed to move in after both signing the residential tenancy agreement and signing off on the condition inspection report;
- the landlord incurred a \$25.00 fee when the tenant stopped payment on the first rent cheque and lost ½ a month's rent when the tenant failed to move in;
- the landlord mitigated any rental loss by re-renting the unit for February 15, 2016;
- the landlord is not entitled to a penalty fee for breaking lease;
- the landlord is entitled to retain the tenant's \$465.00 security deposit towards her monetary award, including loss of rent, the stopped check fee and the filing fee.

In accordance with section 72(2) of the Act and the findings from the previous hearing with respect to these parties, I have already allowed the landlord to retain the tenant's \$465.00 security deposit towards the landlord's monetary award. Therefore, the tenant's application to obtain the security deposit is moot.

**I dismiss the application without liberty 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: March 28, 2017

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Residential Tenancy Branch