



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Decision Codes: FF, MND, MNSD & MNDC

### **Introduction**

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$3176 including a claim of \$1500 for liquidated damages, \$894 to replace a carpet, \$387.10 for painting and \$315 for cleaning.
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

Representative(s) of the applicant failed to contact the telephone bridge number at the scheduled time for the hearing. The respondent was present and ready to proceed. The telephone line remained open while the phone system was monitored for ten minutes. The applicant failed to appear. I then proceeded with the hearing in the absence of the applicant.

Rule 7.3 of the Rules of Procedure provides as follows:

### **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.

The respondent testified he vacated the rental unit on July 29, 2017. He testified that while he gave short notice he worked with the property manager and a new tenant moved in for the first of August.

The applicant has the burden of proof. The applicant failed to prove their claim and as a result I dismissed the claim without liberty to re-apply. The respondent was present and ready to proceed.

The Application for Dispute Resolution filed by the landlord included a claim to keep the security deposit. That claim has been dismissed without leave to re-apply in these proceedings. Policy Guideline #17 includes the following statement:

**“C. RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH DISPUTE RESOLUTION**

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit; or
- a tenant's application for the return of the deposit.

unless the tenant's right to the return of the deposit has been extinguished under the Act<sup>14</sup>. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

I determined the tenant's right to the return of the deposit has not been extinguished under the Act. The tenant provided the landlord with his forwarding address in writing on July 28, 2017. The tenant attempted to arrange a time to conduct an inspection on several occasions but the landlord failed to return the e-mail and text messages and failed to arrange a time to conduct a Final Inspection. As a result I ordered that the landlord pay to the tenant the security deposit in the sum of \$750.

Law dealing with the return of the security deposit:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenant testified he has filed a claim for an order for the doubling of the security deposit and that claim is set for hearing in September 2018. I determined it was not appropriate to grant a doubling of the security deposit at this time as the landlord was not present at the hearing. The tenant retains the right to continue with his application seeking the doubling portion of the security deposit.

Conclusion:

I ordered that the landlord's claim for a monetary order be dismissed without liberty to re-apply. I further ordered that the landlord pay to the Tenant the security deposit in the sum of \$750. The tenant retains the right to continue with his claim for the doubling portion of the security deposit.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 01, 2018

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Residential Tenancy Branch