



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCLS, FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The landlord applied for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement requesting to retain the tenant's full security deposit of \$600.00 plus the recovery of the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing and gave affirmed testimony. During the hearing the parties presented their evidence. A summary of their testimony is provided below and includes only that which is relevant to the hearing. Both parties were provided with the opportunity to ask questions during the hearing.

Neither party raised any concerns regarding the service of documentary evidence.

### Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

In addition to the above and by consent of the parties, the landlord's application was amended to include "Suite B" in the rental unit address. This amendment was made pursuant to section 64(3)(c) of the Act.

### Issues to be Decided

- Is the landlord entitled to the return of their security deposit under the Act?

- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

A copy of the tenant agreement was not submitted in evidence. The parties agreed that a one year fixed-term tenancy began on March 1, 2017 and was scheduled to revert to a month to month tenancy at the end of February 2018. The tenant vacated the rental unit on January 31, 2018. Monthly rent during the tenancy was \$1,200.00 and was due on the first day of each month. A security deposit of \$600.00 was paid by the tenant at the start of the tenancy, which the landlord continues to hold.

There is no dispute that the tenant vacated the rental unit on January 31, 2018. The parties confirmed that on January 29, 2018 the tenant emailed the landlord to give notice that she was vacating the rental unit on January 31, 2018.

The parties agreed that the tenant provided her forwarding address by email to the landlord on February 1, 2018. The landlord applied to retain the tenant's security deposit on February 14, 2018.

The parties referred to an email submitted in evidence which the landlord referred to indicating that the landlord provided two opportunities for the tenant to attend the move-out condition inspection. The first opportunity was on January 31, 2018 at 9:00 p.m. and the second opportunity was on February 1, 2018 from 9:30 a.m. to 11:30 a.m. In response to the landlord's email dated January 31, 2018 at 9:54 p.m. the tenant replied to the landlord and stated in part:

“...I am good without a walk thru to be honest. Outside of the cleaning a fell you will find it just like new...”

[Reproduced as written]

The tenant stated that she became ill in the rental unit which the parties were advised was not relevant to the landlord's security deposit claim before me. I make no findings as to the tenant's statement that she became ill in the rental unit as a result.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Landlord's claim for the tenant's security deposit** – Section 36(1) of the *Act* applies and states:

**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 evidence before me, I find the tenant extinguished their right to the return of the security deposit as the tenant was provided two opportunities to attend a move-out inspection and the tenant responded by writing in her email "I am good without a walk thru to be honest." At that point I find the tenant extinguished all rights to the return of her security deposit and I find the landlord is entitled to retain the entire \$600.00 security deposit as a result.

Therefore, I find the landlord's application is successful and I authorize the landlord to retain the tenant's full **\$600.00** security deposit.

As the landlord's application had merit, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

I grant the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$100.00** for the recovery of the cost of the filing fee.

Conclusion

The landlord's application is successful.

The landlord is authorized to retain the tenant's full security deposit as I find the tenant extinguished their right to their security deposit.

The landlord is granted a monetary order pursuant to section 67 of the *Act* in the amount of \$100.00 for the recovery of the cost of the filing fee. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 14, 2018

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Residential Tenancy Branch