



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding H AND L CONDO SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Codes: MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for the return of the security deposit and to recover the filing fee.

Both parties appeared.

This hearing commenced on October 4, 2019 and was adjourned due issues of service. The interim decision should be read in conjunction with this decision.

The tenant indicated at the start of the hearing that they did not receive any evidence from the landlord. The landlord stated that it was sent by email as agreed upon at the previous hearing.

In this case, the landlord has filed emails, and photographs of the unit. I find the photographs are not relevant as the landlord has not filed a claim for damages.

However, I find the emails are relevant and the tenant acknowledged that they sent the emails. Therefore, I will consider the emails that were exchanged between the parties.

### Issue to be Decided

Is the tenant entitled to the return of the security deposit?

### Background and Evidence

The tenancy began on October 1, 2017. Rent in the amount of \$2,395.00 was payable on the first of each month. A security deposit of \$1197.00 was paid by the tenant. The tenancy ended on May 31, 2019.

The parties agreed that a move-in condition inspection report was completed at the start of the tenancy. The parties agreed that the landlord had received the tenant's forwarding address by email on June 2, 2019.

The landlord testified that the tenant did not participate in the move-out condition inspection, although they had mutually agreed to the day and time. The landlord stated that the tenant sent them an email mail on the date of the inspection stating they would not be attending and to complete the inspection without them. Filed in evidence are emails supporting the landlord's testimony.

The tenant testified that they did not participate in the move-out condition report because they were not available at the time they had arranged. The tenant stated that they were happy with the condition they left the premises and told the landlord that they could complete the inspection in their absence.

The tenant testified that they did not have the intention of extinguishing their rights to the deposit and the law should default to the return of the deposit when they did not intent to extinguish their rights, such as in this case.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find 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.

In this matter the parties agreed to complete the move-out condition inspection on May 31, 2019. As this was a mutually agreed upon date, I find there is no requirement for the

landlord to provide a second opportunity. As this is only required when the parties do not agree on a proposed date.

I accept the evidence of both parties, that on May 31, 2019, at 4:22 PM the tenant informed the landlord by email, that they would not be attending the scheduled inspection and to complete the inspection in their absence.

I accept the evidence of the tenant that they did not intend to extinguish their rights to the return of the deposit. However, section 35 (1) of the Act states the tenant and landlord **must** inspect the rental unit. Simply telling the landlord to complete the inspection without them, and not attending to the scheduled inspection, does not meet the tenant's obligation under the Act. I find the tenant did not participate in the scheduled move-out condition inspection and extinguished their rights to the return of their deposit.

As I have found the tenant did not participate in the move-out condition inspection. I find the tenant is not entitled to the return of their security deposit. Therefore, I dismiss the tenant's application.

### Conclusion

The tenant failed to participate in the move-out condition inspection. The tenant's rights to the return of their security deposit is extinguished. The tenant's application is dismissed.

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: November 20, 2019

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Residential Tenancy Branch