



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNSD FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The tenant applied for the return of her security deposit, and requested the recovery of the cost of the filing fee.

The tenant, the landlord and the spouse of the named landlord appeared at 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.

Neither party submitted documentary evidence regarding this matter.

### Issues to be Decided

- Is the tenant entitled to the return of her security deposit under the *Act*?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The parties agreed that a month to month tenancy began on October 20, 2012 and ended on July 31, 2015 when the tenant vacated the rental unit. Monthly rent during the tenancy was \$1,500.00 and was due on the first day of each month. A security deposit of \$750.00 was paid by the tenant at the start of the tenancy, which the landlords continue to hold.

The tenant could not recall the date she provided her written forwarding address to the landlord; however, the landlord testified that it was received via text message. The parties agreed that an outgoing condition inspection was scheduled for July 31, 2015 at 9:00 a.m. The parties also agreed that on July 31, 2015 the rental unit was not ready to be inspected so a second opportunity was scheduled with the tenant for August 4, 2015 at 9:00 a.m. The tenant confirmed that she did not attend that appointment for the outgoing condition inspection as she did not want to travel from another town to participate in the inspection.

### Analysis

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

**Tenant's claim for the return of the security deposit** – There is no dispute that the tenant did not attend the scheduled outgoing condition inspection which was set for August 4, 2015 at 9:00 a.m. Section 36(1)(b) 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.**

[my emphasis added]

Based on the above, I find that the tenant extinguished her right to the return of her security deposit when she failed to attend the outgoing condition inspection confirmed by the parties for August 4, 2015 at 9:00 a.m. Therefore, **I dismiss** the tenant's application due to insufficient evidence, **without leave to reapply**.

As the tenant's application was unsuccessful, I do not grant the tenant the recovery of the cost of the filing fee.

### Conclusion

The tenant's application is dismissed without leave to reapply.

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: June 15, 2016

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**Residential Tenancy Branch**