



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND-S, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- compensation for alleged damage to the rental unit by the tenants;
- authority to keep the tenants' security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlords and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to testify and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, only the relevant evidence is described in this Decision.

### Issue(s) to be Decided

Are the landlords entitled to the relief sought in their application, including the request to recover the filing fee?

### Background and Evidence

The landlord submitted without dispute the tenancy began on August 15, 2019, ended on June 23, 2020, monthly rent was \$1,300, and the tenants paid a security deposit of \$650, which they have retained.

In their application, the landlords wrote that the tenants did not provide proper notice to end the tenancy, did not clean the rental unit, and caused damage to the rental unit.

The landlords also wrote in their application that the tenants told them in a text message to keep their security deposit.

During the hearing, the landlords said the security deposit would be sufficient to cover their claims against the tenants, and that the only issue for me to consider was recovery of their filing fee.

The tenant submitted that the landlords had their permission to keep the security deposit, and disputed that the landlords were entitled to recover the filing fee.

### Analysis

Under section 38(1) of the Act, unless the tenant's right to a return of their security deposit has been extinguished by failure to participate in a move-in or move-out inspection, a landlord must either return a tenant's security deposit or make an application for dispute resolution claiming against the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing and the end of the tenancy.

The evidence supplied by the landlords show a number of text messages were sent between the parties near or at the end of the tenancy.

In that chain of text messages, the tenant indicated they would not come back to clean the rental unit, they would not come for a move-out inspection, and told the landlords they could keep their security deposit. The landlords indicated in their application they had the tenants' permission to keep the security deposit.

In this case, I find the evidence shows that the tenants informed the landlords they would not attend the move-out inspection and that the landlords could keep their security deposit.

As the tenants did not attend the move-out inspection, by operation of section 36(1) of the Act, the tenants extinguished their rights to the security deposit. Additionally, the landlords had the tenants' permission to keep the security deposit, by way of the text message communication.

### Conclusion

As a result of the above, I find it was unnecessary for the landlords to file an application for dispute resolution. I therefore decline to award them recovery of their filing fee.

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: October 27, 2020

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Residential Tenancy Branch