



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

The tenants apply to recover a \$500.00 security deposit, doubled pursuant to the provisions of s. 38 of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show, on a balance of probabilities, that the tenants are entitled to a return of a deposit or a doubling of it?

### Background and Evidence

The rental unit is a four bedroom house. There is a written tenancy agreement (though not produced at this hearing) showing the tenancy started in February 2013 for a six month fixed term at a monthly rent of \$1000.00 and that the tenants paid a \$500.00 security deposit to the landlords.

The tenants purchased the home from the landlords at the end of August. Neither the purchase agreement nor the “Seller Statement of Adjustments” for that sale makes mention of the security deposit.

The tenants provided the landlords with a forwarding address in writing on September 3, 2013.

### Analysis

The landlords argue that this is a real estate matter and not a residential tenancy matter. I disagree. There is no doubt that arbitrators acting under the authority of the *Residential Tenancy Act* have no jurisdiction in matters involving the conveyance of real estate, but here there existed two distinct legal relationships; that of landlord and tenant

and that of vendor and purchaser. Under the former, arbitrators under the *Act* have virtually exclusive jurisdiction. The matter brought forward by this application is a landlord and tenant matter, not a vendor and purchaser matter.

The landlords argue that the tenants had legal representation on the conveyance and so their lawyer should have made an adjustment for the deposit. No adjustment was made and so the landlords consider that should be the end of the matter.

I must disagree with this position as well. The relevant provisions of s.38 are as follows:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

\* \* \*

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and
- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, **the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant**, or
- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

\* \* \*

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

*(my emphasis)*

As far as can be determined, the tenancy ended on August 30, 2013; the completion and possession dated when the applicants ceased being tenants and became owners. The forwarding address in writing referred to in ss.(1), above, was received September

3<sup>rd</sup>. It seems to me that whether the parties continued to have a relationship as vendors and purchasers or whether they did not, the landlords continued to hold the tenants' security deposit and s.38 still applied. For the landlords to keep the security deposit they required the tenants' agreement in writing (as in a statement of adjustments perhaps) or the director's (an arbitrator's) order. They did not have either.

### Conclusion

The tenants are entitled to return of the \$500.00 deposit because the landlords have no lawful authority to keep it. The tenants are entitled to a doubling of the deposit to \$1000.00 because the landlords have failed to comply with s.38. I award the tenants recovery of the \$50.00 filing fee.

There will be a monetary order against the landlords jointly and severally in the amount of \$1050.00, as claimed.

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: December 31, 2013

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Residential Tenancy Branch

