



# 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 the remainder of a security deposit, doubled pursuant to 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 return of a deposit or to have it doubled under the law?

### Background and Evidence

The relevant facts are not in dispute. The rental unit is a two bedroom lower suite in a house. The landlords rent the upper suite to others. The tenancy started in September 2012 and ended November 30, 2014. At the end of the tenancy the landlords held the tenants’ \$600.00 security deposit and had received the tenants’ forwarding address in writing.

The parties conducted a move-out inspection on November 30, 2014 and a report was prepared. The attending tenant Mr. S. noted on the report that he did not agree that it represented a true record of the state of the premises. Despite that note, he agreed in the report to permit the landlords to retain \$300.00 of the deposit money.

Some correspondence was exchanged in the days following, but ultimately the landlords did not agree to settle the matter for the \$300.00t. Ultimately, the landlords decided to retain \$490.00 of the deposit money. They repaid \$110.00 of the deposit to the tenants on December 17, 2014.

### Analysis

Section 38 of the *Act* provides:

**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.**

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(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.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

**(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.**

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) *[service of documents]* or give the deposit personally to the tenant.

*(emphasis added)*

In the condition inspection report, the tenant Mr. S. indicated his agreement to allow the landlords to retain \$300.00 of the deposit money. I find that this was an offer. The landlords declined the offer when they decided to keep more than \$300.00 of the deposit money. As a result, Mr. S.'s offer was not accepted, there was no agreement and the tenants are not bound by the \$300.00 offer.

The landlords do not have the tenants' written authorization to keep any portion of the deposit, nor have they yet applied for dispute resolution to seek an order permitting them to offset the deposit. As a result, the tenants are entitled to recover the \$490.00 remainder of the deposit.

Under s. 38, the landlords had fifteen days from November 30, 2014 to either repay the deposit or make application to keep it. They did neither and so are subject to the doubling penalty in s. 38(6)(b), above.

The tenants are entitled to recover \$1200.00 as the doubled deposit, less \$110.00 paid, plus the \$50.00 filing fee for this application.

### Conclusion

There will be a monetary order against the landlords in the amount of \$1140.00.

At the hearing the landlords filed material in an effort to substantiate a monetary claim for cleaning and repair of the premises. As stated at hearing, to do so they are obliged to make their own application for dispute resolution. They are free to do so. No leave is required.

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: March 23, 2015

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Residential Tenancy Branch

