



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSD, FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants' application is for compensation equivalent to double their security deposit for the landlords' failure to comply with section 38 of the Act.

Both tenants appeared. The landlord ST appeared. The landlord CLTL's agent attended. All parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The agent admitted service of the tenants' dispute resolution package. The tenants admitted service of the landlord CLTL's evidence. The landlord ST admitted service of the tenants' dispute resolution package and waived service of the landlord CLTL's evidence.

### Issue(s) to be Decided

Who is the proper respondent to this application? Are the tenants entitled to a monetary award for the return of a portion of their pet security deposit? Are the tenants entitled to a monetary award equivalent to the amount of their security deposit as a result of the landlord(s) failure to comply with the provisions of section 38 of the Act? Are the tenants entitled to recover the filing fee for this application from the landlord(s)?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenants' claim and my findings around it are set out below.

The tenant TM began occupying the rental unit May 2014. The tenant NM began occupying the rental unit February 2014. The tenancy ended 31 July 2015.

The tenants (including a third tenant) and the landlord ST (the former landlord) entered into the original tenancy agreement on or about 3 June 2014. Monthly rent of \$2,100.00 was due on the first. At the beginning of the tenancy the former landlord collected a total security deposit of \$1,050.00.

In February 2015, ownership of the rental unit transferred from the former landlord to the successor landlord (CLTL). I was provided with a copy of the contract of purchase and sale.

On or about 1 May 2015, the tenants and the successor landlord entered into a second tenancy agreement. That agreement purported to cover a tenancy beginning 1 May 2015 and ending 31 July 2015. Monthly rent of \$2,152.50 was due on the first. The second tenancy agreement set out at page three that a security deposit in the amount of \$1,050.00 was still held by the former landlord.

The tenants testified that they provided their forwarding addresses in writing to the successor landlord on 12 September 2015. The tenants testified that these were provided to the successor landlord in person.

The tenants testified that there are no prior orders of the Residential Tenancy Branch in respect of this tenancy. The tenants testified that they did not authorize the landlords to retain any amount from the tenants' security deposit.

The former landlord testified that he was not aware of any reason that would entitle the successor landlord to retain any amount from the tenants' security deposit.

### *Tenants' Submissions*

The tenants submit that the successor landlord is responsible for the return of the tenant's security deposit. The tenants submit that the dispute, if any, is between the former and successor landlords.

### *Former Landlord's Submission*

The former landlord submits that the obligations under the tenancy agreement transferred to the successor landlord by virtue of both section 93 of the Act and clause 5 of the contract of purchase and sale.

The former landlord submits that if the buyer wished to have a specific adjustment for the security deposit it was the responsibility of the successor landlord to insert that term in the contract of purchase and sale or as an adjustment in the conveyancing process.

### *Successor Landlord's Submission*

The successor landlord submits that the former landlord collected the security deposit and thus he should return it. The successor landlord submits that the lack of a specific clause in the tenancy agreement governing the security deposit suggests that it did not transfer.

### Analysis

Section 93 of the Act establishes that the obligations of a landlord under this Act with respect to a security deposit or a pet damage deposit run with the land or reversion. It is not disputed that ownership of the rental unit transferred to the successor landlord in February 2015.

The successor landlord asks me to find that the construction of the contract of purchase and sale indicates that the security deposit remained the former landlord's responsibility. I do not agree with this submission.

The contract of purchase and sale governs the relationship between the successor landlord and former landlord. The tenants are not privy to that agreement. Section 93 of the Act is clear that the obligation passed to the successor landlord. Subsection 5(1) of the Act prohibits contracting out of the provisions of the Act and Regulations. Any term that attempts to contract out is of no effect. This means that even if the tenants'

rights were somehow affected by the contract of purchase and sale, subsection 5(1) would prevent that provision from being enforceable.

For these reasons, I find that the proper respondent to the tenants' application is the successor landlord alone and not the former landlord. The style of cause to this decision has been amended to reflect this.

Section 38 of the Act requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within fifteen days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security deposit. However, pursuant to paragraph 38(4)(a) of the Act, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The tenancy ended 31 July 2015. The tenants provided their forwarding addresses in writing on 12 September 2015. Pursuant to section 38 the successor landlord had until 27 September 2015 to return the tenants' security deposit in full or file to retain all or a portion of that deposit. The successor landlord did not return the tenants' security deposit or file for dispute resolution within fifteen days.

The tenants did not authorize the successor landlord to retain any amount from the security deposit. There is no evidence before me that indicates that the successor landlord was entitled to withhold any amount from the tenants' security deposit.

On this basis, the tenants are entitled both to return of their security deposit in the amount of \$1,050.00 as well as compensation in the amount of \$1,050.00 pursuant to subsection 38(6) of the Act from the successor landlord.

As the tenants have been successful in their application, they are entitled to recover the filing fee paid from the successor landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$2,150.00 under the following terms:

<b>Item</b>	<b>Amount</b>
Return of Security Deposit	\$1,050.00
Subsection 38(6) Compensation	1,050.00
Recovery of Filing Fee for this Application	50.00
<b>Total Monetary Order</b>	<b>\$2,150.00</b>

The tenants are provided with a monetary order in the above terms and the landlord must be served with this order as soon as possible. Should the landlord fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 09, 2016

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Residential Tenancy Branch

