



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KENSON REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC MNSD OLC

### Introduction

This hearing was convened in response to an application from the tenants pursuant to the *Residential Tenancy Act* (“*Act*”) for:

- a monetary order pursuant to section 67 of the *Act*;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- an order directing the landlord to return their security deposit pursuant to section 38 of the *Act*.

Both the landlord and the tenants appeared at the hearing. The landlord was represented at the hearing by agent S.W. (the “landlord”). The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord acknowledged receiving the tenants’ application for dispute resolution by way of Canada Post Registered Mail. No evidentiary packages were submitted to the hearing by either party. Pursuant to section 89 of the *Act* the landlord is found to have been duly served with the tenants’ application in accordance with the *Act*.

### Issue(s) to be Decided

Should the landlord be directed to return the security deposit to the tenants? If so, should it be doubled?

Are the tenants entitled to monetary award?

Should the landlord be directed to comply with the *Act*?



### Background and Evidence

Undisputed testimony presented to the hearing by the tenants explained that this tenancy began in July 2013 and ended in May 2017. Rent was \$2,800.00 at the conclusion of the tenancy and a security deposit of \$1,300.00 was paid to the landlord at the outset of the tenancy. The landlord returned \$827.50 of the tenants' security deposit and withheld \$472.50.

The tenants said that they had spoken to an information officer with the *Residential Tenancy Branch* and had been informed that they may be entitled to a doubling of their security deposit. Furthermore, the tenants said they were also informed that they may be entitled to compensation under the *Act* because the landlord had not provided them with compensation after informing them via email that the home was to be sold and that they needed to vacate the premises.

During the course of the hearing the tenants explained that they had signed a series of fixed-term tenancy agreements with the last expiring in February 2017. They said the owner had requested that they leave the rental premises at the end of their lease agreement (which was set to expire in February 2017) because the owner was selling the property. Following some negotiations with the landlord, the tenants secured a four month extension to remain in the rental unit.

At the hearing, both parties agreed that the tenants had performed a condition inspection of the property with the landlord on June 1, 2017 and that the landlord had withheld \$472.50 from the tenants' security deposit without written permission to do so. The tenants gave undisputed testimony that they had provided their forwarding address to the landlord on the signed condition inspection report which was completed with the landlord following the conclusion of the tenancy. The tenants explained that they did not provide with landlord with written permission to withhold any portion of their security deposit, and had in fact been given assurances by the landlord that he was satisfied with the condition of the rental unit, and that the entirety of their security deposit would be returned.

### Analysis

Section 38 of the *Act* requires the landlord to either return a tenant's security deposit in full or file for dispute resolution for authorization to retain the deposit 15 days after the *later* of the end of a tenancy and, or upon receipt of the tenant's forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award,



pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, 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 as per section 38(4)(a). A landlord may also under section 38(3)(b), retain a tenant's security or pet deposit if an order to do so has been issued by an arbitrator.

No evidence was produced at the hearing that the landlord applied for dispute resolution within 15 days of receiving a copy of the tenants' forwarding address on June 1, 2017, or following the conclusion of the tenancy on May 31, 2017. If the landlord had concerns arising from the damages that arose as a result of this tenancy, the landlord should have applied for dispute resolution to retain the security deposit. It is inconsequential if damages exist, if the landlord does not take action to address these matters through the dispute resolution process. A landlord cannot decide to simply keep the security deposit as recourse for loss.

While the landlord acknowledged that \$472.50 of security deposit was retained, no evidence was produced at the hearing that the landlord received the tenants' written authorization to retain all, or a portion of the security deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a) of the *Act*, nor did the landlord receive an order from an Arbitrator enabling her to do so.

Pursuant to section 38(6)(b) of the *Act*, a landlord is required to pay a monetary award equivalent to double the value of the security deposit if a landlord does not comply with the provisions of section 38 of the *Act*, less the amount already returned to the tenants. The tenants are therefore entitled to a monetary award in the amount of \$1,772.50, representing a doubling of the tenants' security deposit, less the \$827.50 already returned.

In addition for a return of their security deposit, the tenants have applied for compensation related to the notice they received via email that the home was to be sold and that vacant possession was required.

Section 51(1) of the *Act* states, "A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement." Testimony was provided to the hearing by both the landlord and the tenants that no Notice to End Tenancy was ever issued to the tenants. The tenants explained they were informed of the landlord's



intentions to sell the property after having received an email from the landlord informing them of such plans. Furthermore, the landlord provided undisputed testimony that the parties had a fixed-term tenancy, and that the tenancy had ended simply because the expired and the landlord did not have an intention to renew the tenancy.

I do not find that the tenants were ever issued a 2 Month Notice to End Tenancy for Landlord's Use of Property, and are therefore not entitled to any compensation under section 51 of the *Act*.

### Conclusion

I issue a Monetary Order in the tenants' favour in the amount of \$1,772.50 against the landlord. 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.

<b>Item</b>	<b><u>Amount</u></b>
Return of Security Deposit w penalty under section 38 of the <i>Act</i> (2 x 1300.00)	\$2,600.00
Less Amount already returned	(-\$827.50)
<b>Total =</b>	<b>\$1,772.50</b>

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 6, 2017

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Residential Tenancy Branch