



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDL-S, FFL

### Introduction

This decision is in respect of the applicant's application for dispute resolution made under the *Residential Tenancy Act* (the "Act") on June 24, 2018. The applicant sought the following remedies under the Act: (1) a monetary order for damages and compensation pursuant to section 67 of the Act; and, (2) a monetary order for recovery of the filing fee pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened on October 30, 2018 and the applicant and a respondent attended the hearing, were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I have carefully considered and reviewed the oral and documentary evidence submitted in respect of this application only as it pertains to the preliminary issue in this decision.

### Preliminary Issue: Jurisdiction

In reviewing the applicant's application for dispute resolution and submitted documentary evidence, I noted that the landlord's name as it appeared on several documents (for example, a notice to end tenancy and correspondence between the tenants and their landlord) is not the name of the applicant in this application.

During the hearing, the parties testified that the respondents vacated the property on May 2, 2018. On May 4, 2018, the applicant took possession of the property. Along with the transfer of ownership the landlord transferred the respondents' security deposit to the new owner, the applicant.

Section 2(1) of the Act sets out what is, and what is not, covered by the legislation. In other words, it establishes the scope of my jurisdiction and authority as an arbitrator. It reads as follows:

2(1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Section 1 of the Act defines “tenancy agreement” to mean an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

In this case, the tenancy ended on May 2, 2018 when the tenants (the respondents in this application) vacated the property. Any rights or obligations post-tenancy that may have continued between the now former tenants and landlord (for example, the obligation of the former landlord to return the tenants’ security deposit) continued to do so regardless of the post-tenancy change in ownership of the property. The tenancy agreement existed between the tenants and the landlord. The tenancy did not continue past May 2, 2018, and the parties to the former tenancy agreement did not change.

That the landlord transferred the respondents’ security deposit to the new owner does not establish a continuance of a tenancy under a new landlord (that is, the new owner). The former landlord was, and remains, obligated to comply with section 38 of the Act beyond the end of the tenancy, regardless of whether he or she chose to give the security deposit to the new owner of the property. In other words, the new owner is not a party to any action between the tenants and the former landlord.

Given the above facts, and applying the law to those facts, I am unable to find that there was a tenancy agreement between the parties, and I am further unable to find that the applicant is a “landlord” as defined in section 1 of the Act.

Accordingly, I find that in the absence of a landlord-tenant relationship, and in the absence of a tenancy agreement between the parties, I am without jurisdiction to consider the applicant’s application because it is excluded by section 2(1) of the Act.

Conclusion

I decline to hear the applicant's application as I have no evidence to establish that I have jurisdiction under section 2(1) of the Act.

I note that the respondents have applied for dispute resolution against the applicant and the former landlord on matters that appear to be related to this application. The dispute resolution hearing for that matter is scheduled for February 8, 2019. While I cannot make any findings of fact or law in respect of the respondents' application, the parties may submit a copy of this decision in advance of that hearing for the arbitrator's consideration. It should be noted, though, that the arbitrator hearing the respondents' application is not bound to follow my decision, pursuant to section 64(2) of the Act.

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

Dated: October 31, 2018

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Residential Tenancy Branch