



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: JR MNSD FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The tenant provided evidence that they had served the landlord with the Application for Dispute Resolution by registered mail and with their forwarding address in writing. The landlord agreed he had received them as stated. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order to return double the security deposit pursuant to Section 38; and
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Do I have jurisdiction in this matter? If so, has the tenant proved on the balance of probabilities that they are entitled to the return of double the security deposit according to section 38 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed that the tenants had paid a security deposit of \$700 each and agreed to rent the units for \$1400 a month (\$700 each). The tenant vacated the unit on February 23, 2018 and provided their forwarding address in writing. The tenants' deposits have never been returned and they gave no permission to retain any of it.

The tenants described the home as being occupied by the owner/landlord. They had rooms in it and shared the kitchen with the owner.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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### **Analysis:**



The *Residential Tenancy Act* section 4 states:

4        *This Act does not apply to*

*(a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,*

*(b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,*

***(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,***

Since the Act does not apply to this living arrangement where the tenants were sharing kitchen facilities with the owner, I find I have no jurisdiction (or authority) in this matter.

Although the tenant pointed out that their tenancy agreement provided that disputes would be settled by arbitration, I find section 5 of the Act provides:

5        *(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.*

*(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.*

Therefore, I find this clause in the tenancy agreement does not confer authority under the Act.

**Conclusion:**

I find I have no jurisdiction in this matter.

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: November 08, 2018

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Residential Tenancy Branch