



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Balmoral Hotel  
and [tenant name suppressed to protect privacy]

## **DECISION**

Codes: MNSD, MNSD

### Introduction:

This was an application by the tenant for recovery of his security deposit as well as overpaid rent for one month. Both the landlord and the tenant attended the hearing.

### Issues:

Is the tenant entitled to recover of the security deposit or other compensation?

### Background and Evidence:

Service of the application was admitted. The tenant testified that the tenancy began on November 1, 2013 with rent in the amount of \$ 450.00 due in advance on the first day of each month. The tenant paid a security deposit of \$ 225.00 on November 1, 2013. The tenant testified that he delivered a handwritten letter dated December 19, 2013 to a person who he knew to be the assistant manager of the landlord. The letter states:

"This is my 30 day written notice. I will be moving, the end of January."

The tenant testified that he moved out and returned the keys to the same individual agent of the landlord on January 31, 2104. The tenant testified that he provided the landlord with his forwarding address by registered mail on February 5, 2014. The tenant testified that he had not consented to the landlord retaining any of the deposit and to date the landlord had not returned any portion of the deposit. The tenant requested double his deposit. The tenant also claimed for rent amounting to \$ 450.00 paid by social services for February which the landlord wrongfully accepted and deposited. The tenant produced a printout from Social Services confirming this.

The landlord admitted not returning or having permission to retain the deposit. The landlord testified that he never received the notice letter of December 2013 or the keys

back from the tenant. The landlord testified that he did not know who the tenant delivered his keys or notice to. It could have been anyone. The landlord testified that his manager advised him that he saw the tenant in the building on February 4<sup>th</sup> 2014 and therefore he must not have moved out until then. He admitted not inspecting the room before that date and therefore not knowing personally or exactly when the tenant actually moved out. The landlord testified that he received only \$ 375.00 in rent from the tenant directly from Social Services.

Analysis:

Section 38 of the Residential Tenancy Act provides that :

**Return of security deposit and pet damage deposit**

- 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.
- (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) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord admitted service of the Application. I find that the landlord received the notification of the forwarding address by registered mail and admitted not having permission to keep the deposit. Accordingly pursuant to section 38 of the Act the tenant is entitled to recover double the security deposit amounting to \$ 450.00. I accept the tenant's evidence which was given in a straightforward and honest manner that he delivered his notice to end the tenancy on December 19, 2013 and his keys on January 31, 2014 to the same person whom he knew as the agent of the landlord. I also prefer his testimony over the landlord's as to when he moved out as the landlord's testimony is based on hearsay and conjecture as he did not know when the tenant actually moved out. I reject his evidence and prefer that of the tenant's. I find that the landlord received rent for February that he knew or ought to have known was not entitled to. I therefore award the additional sum of \$ 450.00 to the tenant.

Conclusion:

I find that the tenant has established a claim totalling \$ 900.00. I grant the tenant a monetary Order in that amount. This Order may be enforced in the Small Claims Court should the landlord not comply.

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: June 09, 2014

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Residential Tenancy Branch

