



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: MNR RR MNSD

### **Introduction**

Only the tenant attended the hearing and gave sworn testimony. The tenant provided evidence that he had served the landlord with the Application for Dispute Resolution by registered mail (which was unclaimed) and by letter with his forwarding address. I find the documents were served pursuant to sections 88 and 89 of the Act for the purposes of this hearing and the Application is deemed to be received pursuant to section 90 of the Act. The tenant requests 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;
- b) An Order for a refund of rent.

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

Has the tenant proved on the balance of probabilities that he is entitled to the return of double the security deposit according to section 38 of the Act and to a refund of rent?

### **Background and Evidence**

Only the tenant attended the hearing and was given opportunity to be heard, to present evidence and make submissions. The tenant said he had paid a security deposit of \$225 in December 2016 (receipt provided) and agreed to rent the room for \$450 a month. When the tenant attended to take up residence, the room was not ready. The landlord had been renovating and the room was without window glass and a door. He also found on January 5, 2017 that the landlord had rented his room to some other men and he called the police. He said the landlord promised in front of the police that he would get the room ready but he did not. Then he said the landlord promised to give him his money back but did not. He said he provided his forwarding address in writing on February 14, 2017 and has not received his damage deposit or a refund of rent.

In evidence is the tenancy agreement, a registered mail receipt and the receipt for the security deposit.

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

**Analysis:**

The Residential Tenancy Act provides:

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) after the end of the tenancy, the director orders that the landlord may retain the amount.*

*(6) If a landlord does not comply with subsection (1), the landlord*

*(a) may not make a claim against the security deposit or any pet damage deposit, and*

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

In most situations, section 38(1) of the Act requires a landlord, within 15 days of the later of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)).

I find the evidence of the tenant credible that he paid \$225 security deposit on December 13, 2016, served the landlord by letter mail with his forwarding address in writing on February 14, 2017 and never lived in the room. I find he gave no permission for the landlord to retain the deposit and has not received the refund of his security deposit. I find the tenant entitled to recover double his security deposit.

I find the tenant's testimony credible that he paid \$450 rent for a room starting January 1, 2017 but was never able to occupy the room because it was not finished and then the

landlord rented it to others. His credibility is supported by the copy of the tenancy agreement in evidence. I find him entitled to a refund of the \$450 rent he paid.

**Conclusion:**

I find the tenant entitled to a monetary order as calculated below. No filing fee is involved.

Security deposit	225.00
Double security deposit	225.00
Refund of January 2017 rent	450.00
<b>Total Monetary Order to Tenant</b>	<b>900.00</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: May 29, 2017

---

Residential Tenancy Branch