



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AVANT-GARDE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD OLC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on September 19, 2015 to obtain a Monetary Order for the return of double their security deposit; an Order to have the Landlord comply with the *Act*, Regulation or tenancy agreement; and to recover the cost of the filing fee for their application.

The hearing was conducted via teleconference and was attended by the male Tenant who gave affirmed testimony that he would be representing both Tenants in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

No one was in attendance on behalf of the Landlords. The Tenant submitted evidence that each Landlord was served notice of this application and this hearing by registered mail on September 25, 2015. Canada Post tracking receipts were submitted in the Tenants' documentary evidence.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

Based on the undisputed evidence of the Tenants, I find that each Landlord was deemed served notice of this hearing on September 30, 2015, five days after they were mailed, in accordance with Section 90 of the *Act*. The hearing continued to hear the undisputed evidence of the Tenants.

### Issue(s) to be Decided

Have the Tenants proven entitlement to a Monetary Order for the return of double their security deposit?

### Background and Evidence

The undisputed evidence was the Tenants entered into a written month to month tenancy agreement that began on July 1, 2013. Rent of \$1,950.00 was due on or before

the first of each month and on June 3, 2013 the Tenants paid \$975.00 as the security deposit. A move in condition inspection report form was completed on approximately July 1, 2013.

The Tenant testified they normally communicated with their Landlord via email. In October or November 2014 the Tenants sent an email to their Landlord with their notice to end their tenancy effective December 31, 2014. The Tenant stated they vacated the rental unit as of December 23, 2014, after paying the full month's rent for December 2014. No move out condition inspection report was completed.

The Tenant submitted they initially provided their forwarding address to the Landlord via email. When the Landlord failed to return their security deposit the Tenants sent the Landlord a letter via registered mail on August 10, 2015 which provided the Landlord with their forwarding address again. The security deposit has not been returned and the Tenants now seek the return of double their \$975.00 security deposit.

### Analysis

In the absence of evidence from the Landlords, who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Tenants and corroborated by their documentary evidence.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 45 (1) of the Act stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 38(1) of the Act stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

This tenancy ended December 31, 2015, as per the Tenants' notice, pursuant to section 45 of the Act. The Landlords were served the Tenants' forwarding address by registered mail on August 10, 2015 and are therefore, deemed to have received that forwarding address on August 15, 2015, pursuant to section 90 of the Act. Accordingly, the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than August 30, 2015. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the Act and that the Landlords are now subject to Section 38(6) of the Act which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim

against the security deposit and the landlord must pay the tenant double the security deposit.

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the \$975.00 deposit since June 3, 2013.

Based on the above, I find the Tenants have succeeded in proving the merits of their application and I award them double their security deposit in the amount of **\$1,950.00** (2 x \$975.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Tenants have succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

The Landlords are ordered to pay the Tenants double the security deposit plus the filing fee for a total amount of \$2,000.00 (\$1,950.00 + \$50.00). In the event the Landlords do not comply with the aforementioned Order, the Tenants have been issued a Monetary Order for **\$2,000.00**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

This tenancy has ended therefore, there is no need to issue a subsequent order for the Landlords to comply with the *Act*, Regulation and/or tenancy agreement.

### Conclusion

The Tenants were successful with their application and were awarded a Monetary Order for the return of double their security deposit and recovery of their filing fee in the amount of **\$2,000.00**.

This decision is final, legally binding, and 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: April 04, 2016

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Residential Tenancy Branch

