



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION AND REASONS

### Dispute Codes

MNSD & FF

### Introduction

This hearing dealt with an application by the tenants seeking the return of their security deposit plus interest. Although the landlord was served with Notice of this application and hearing by registered mail, she did not appear. The tenants provided evidence that the registered mail packages sent to the landlord had been returned as “unclaimed”.

Section 89 of the *Act* states that a landlord can be served with notice of an application and hearing by registered mail and section 90 of the *Act* states that a party served by registered mail is deemed to have been served on the fifth (5) day after it was mailed. Therefore, even though the registered mail packages sent to the landlord has not been claimed, I deem the landlord as having been served pursuant to section 90 of the *Act*.

I proceeded with the hearing in the landlord’s absence.

### Issue to be Determined

Has the landlord breach section 38(1) of the *Act* by failing to return the tenants’ security deposit plus interest?

### Background and Evidence

Based on the evidence provided by the tenants and in the absence of any evidence from the landlord I accept the following:

- This tenancy began on August 1, 2008 for the monthly rent of \$975.00 and a security deposit of \$400.00 was paid on July 2 & 3, 2008;
- That the tenancy ended effective February 28, 2009;
- The tenants sent the landlord their forwarding address in writing by registered mail on March 5, 2009; and
- The landlord has not returned the tenants’ security deposit plus interest.

The tenants stated that initially they had some telephone conversations where the landlord had indicated that she would return the security deposit; however, this never happened. The tenants submitted a recording on a telephone answering machine where the person speaking, identified as the landlord, indicates that the security deposit is available to be picked up by the tenants. The tenants stated that when they attempted to make arrangements to pick up the deposit the landlord refused. The tenants also pointed out the landlord never called them, even though phone numbers had been

provided, and the message played at the hearing was left on one of the tenants' parent's answering machine.

The tenants' seek the return of their security deposit plus interest and to recover the cost of filling this application from the landlord.

### Analysis and Findings

I grant the tenants' application and find that the tenants are entitled to the return of double their security deposit plus interest and the recovery of the filling fee paid for this application from the landlord.

I accept that the tenants provided the landlord their forwarding address in writing by registered mail. This is an accepted form of service under the *Act* pursuant to section 88 and even though the landlord rejected the package I find that the landlord is deemed to have received the tenants' forwarding address as of March 10, 2009.

Section 38(1) of the *Act* required the landlord to return the security deposit within 15 days of the end of the tenancy or after receiving the tenants forwarding address or to file an application for dispute resolution to retain the tenants' security deposit within 15 days. I am satisfied that the landlord did not make any attempt to comply with these requirements and pursuant to section 38(6) of the *Act* I Order that the landlord pay the tenants double their security deposit plus interest.

I find that the tenants have established a total monetary claim for the sum of **\$852.98** comprised of double the security deposit of \$400.00, \$2.98 in accumulated interest plus the recovery of the \$50.00 filling fee paid by the tenants for this application.

### Conclusion

The tenants' application is granted. I grant the tenants' a monetary Order for the sum of **\$852.98**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Dated June 24, 2009.

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Dispute Resolution Officer