



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNSD, FF, O

### Introduction

This hearing dealt with an application by the tenants for orders cancelling a landlord's notice to end tenancy and awarding the tenants a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail deemed delivered June 15, 2013, the landlord did not appear.

The tenant's evidence was that they had given the landlord notice to end tenancy. As it is clear that the request for an order cancelling the landlord's notice to end tenancy was an error by the tenants the hearing focused on the tenants' application for a monetary order.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This month-to-month tenancy commenced November 1, 2012 and ended May 31, 2013. The monthly rent for the first six months of the tenancy was \$1400.00; for the rest of the year it was \$900.00. The monthly rent was due on the first day of the month. The tenants paid a security deposit of \$500.00.

There was no written tenancy agreement. At the beginning of the tenancy the landlord gave the tenants his contact information and instructions on where to deposit the rent by providing them with a void cheque.

On the last day of the tenancy there was some unpleasantness between the landlord and the tenants. As a result, no move-out inspection was conducted.

On June 1, 2013 the tenants filed this application for dispute resolution. On the application they gave their new address as their address for service. The application

was sent by registered mail to the address shown on the void cheque originally provided to the tenant by the landlord. No payment has been received from the landlord.

### Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit.

In the present case, the tenants provided their forwarding address to the landlord when they sent the application for dispute resolution to the landlord by registered mail. Section 88 specifically allows landlords and tenants to give or serve any documents that are required or permitted to be given or served on the other party by registered mail and section 90 provides that a document given or served by registered mail is deemed delivered on the fifth day after it was mailed, whether the addressee picks up the registered mail or not. More than fifteen days has elapsed since the tenants provided the landlord with their forwarding address and the landlord has neither repaid the security deposit nor filed an application claiming against the deposit.

Section 38(6) provides that if a landlord does not comply with section 38(1), the landlord must pay the tenant double the amount of the security deposit. The legislation does not allow any flexibility on this issue.

I find that the tenants are entitled to an order that the landlord pay them the sum of \$1000.00, representing double the security deposit. I further order that as the tenants were successful on their application they are entitled to reimbursement from the landlord of the \$50.00 fee they paid to file it. Accordingly, I grant the tenants an order in the amount of \$1050.00.

This order does not prevent the landlord from filing a separate application for dispute resolution against the tenants for a monetary order for any damages or cleaning costs that may be proven at that hearing.

### Conclusion

A monetary order in favour of the tenants is made. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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: July 15, 2013

---

Residential Tenancy Branch

