



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 466109 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNSD, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants for the return of double their security deposit, and to recover the filing fee from the Landlord.

The Tenants appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Landlord during the 22 minute duration of the hearing. Therefore, I turned my mind to the service of the Notice of Hearing documents by the Tenants.

The Tenants testified that the Landlord was served with copy of the Application, a copy of their amended Application, and the Notice of Hearing documents by registered mail on December 31, 2014. The Tenants provided a copy of the Canada Post tracking numbers as evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Tenants, I find that the Landlord was deemed served with the required documents pursuant to the Act.

### Preliminary Issues

At the start of the hearing the Tenants testified that they had served the Landlord with their forwarding address by email pursuant to Section 38(1) of the Act. However, the Act does not allow the service of formal documents, such as a notice to end tenancy or a forwarding address, by e-mail. The Tenants provided no evidence to show that the e-mail containing their forwarding address had been received and acknowledged by the Landlord.

Analysis and Conclusion

Before a tenant's Application for the return of a security deposit can be determined, the tenant must prove that they have complied with Section 38(1) of the Act in giving proper notice to the Landlord of the forwarding address in writing.

In this case, as the Tenants failed to provide sufficient evidence that they had complied with Section 38(1) of the Act, I find the Application was premature and I declined to deal with it. However, I provide leave for the Tenants to re-apply after they have satisfied the requirements of the Act in relation to the forwarding address.

If the Tenants proceed with making another Application, the Tenants will need to prove that Section 38(1) of the Act has been complied with within the one year time limit stipulated by Section 39 of the Act.

I have made no legal findings of fact or law with respect to the merits of this Application and this does not extend any applicable time limits under the Act.

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 02, 2015

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Residential Tenancy Branch

