



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, OLC, FF

### Introduction

This was a hearing with respect to the tenants' application for a monetary award. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord did not attend although he was served with the application and Notice of Hearing sent by registered mail on June 26, 2015. The tenants submitted Canada Post tracking information that showed that the landlord neglected to pick up the registered mail after notice cards were left, indicating where the mail could be picked up. Sections 89(1) & (2) of the Act provide that one of the ways in which an application for Dispute Resolution may be served on a landlord is by registered mail to the address where the landlord carries on business. Section 90 of the Act provides that a document served by mail in accordance with section 89 is deemed to be received on the 5<sup>th</sup> day after it is mailed. The landlord's failure to pick up registered mail does not constitute a ground for failing to attend a hearing and it does not rebut the deeming provision of section 90. Pursuant to that provision, I find that the landlord is deemed to have been served with the application and Notice of Hearing on July 1, 2015.

### Issue(s) to be Decided

Are the tenants entitled to compensation equivalent to one month's rent pursuant to section 51 of the *Residential Tenancy Act*?

### Background and Evidence

The rental unit was the main floor suite in a North Vancouver house. The tenancy began October 26, 2013 on a month to month basis with rent in the amount of \$1,500.00 payable on the first of each month. The tenants paid a security deposit of \$750.00 at the start of the tenancy.

On March 31, 2015 the landlord gave the tenants a letter; it said in part as follows:

(Names of tenants), we have sold our house.

They we have to terminate the tenancy by ~~31, May 2015~~. June 1, 2015

We have appreciated their upkeep our house, and taken very good care of the property.

We wish you the best in finding a new place to call home. (reproduced as written)

The tenant testified that he told the landlord that the letter was not in the form required and also that the landlord was required to pay the tenants the amount of one month's rent as compensation for a two month Notice to End Tenancy. The tenants said that they moved out pursuant to the imperfect notice because they did not want to interfere with or upset the landlord's house sale. The tenant said that the landlord informed him that he was not prepared to give the tenants "free rent".

The tenant testified that they received an overpayment of their security deposit when they moved out. The landlord paid them \$800.00 instead of the required \$750.00

The tenants have requested compensation in the amount of \$1,500.00, as required by section 51, less the \$50.00 security deposit overpayment.

### Analysis

Section 52 of the *Act* sets out the law governing notices to end a tenancy. It provides that to be effective a notice given by a landlord must be in the approved form. The landlord's March notice was not in approved form nor did it approach the detail required in the approved form. It was not an effective notice to end tenancy.

I note that Residential Tenancy Policy Guideline #18 "Use of Forms," provides:

A form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone. As a result, it is advisable to apply to an arbitrator to dispute the notice, so that the validity of the notice can be determined. **Where a tenant accepts a Notice To End A Tenancy that is in the old form or is not in the required form and the tenant vacates in response to the notice, the landlord cannot rely upon the failure to give notice in the required form and allege that the tenant owes the landlord rent as a result of the improper ending of the tenancy.**

(emphasis added)

In the circumstances before me where the tenants pointed out to the landlord that the Notice was defective, but moved out even though the landlord refused to issue a proper Notice, I find that to allow the fact of the defective notice to operate as a bar to the tenants' statutory right to compensation under section 51 would be contrary to public policy and to the intent of the legislation because it would permit a landlord to rely upon his own failure to give an proper form of notice and thereby profit from his failure or refusal to comply with the *Act*.

For the reasons stated I find that the tenants are entitled to compensation in the amount of \$1,500.00 pursuant to section 51(1) of the *Residential Tenancy Act*, less the sum of \$50.00, being a security deposit overpayment.

### Conclusion

I have awarded the tenants the sum of \$1,450.00. They are entitled to recover the \$50.00 filing fee for this application, for a total award of \$1,500.00 and I grant the tenants an order under section 67 in the said amount. This order may be registered 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: December 04, 2015

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Residential Tenancy Branch

