



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR, FFT

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act* (the “Act”) and dealt with an Application for Dispute Resolution filed by the Tenants for a monetary order for the return of a security deposit and to recover the filing fee.

In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

In this type of matter, the tenant must prove they served the landlord with the Notice of Dispute Resolution Proceeding with all the required inclusions as indicated as per section 89 of the *Act*.

*Policy Guideline #49 states:*

### **Serving of the Notice of Dispute Resolution Proceeding package**

Once the package is served, the tenant must complete and submit a Proof of Service Tenant’s Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding. Once the package is deemed served, the Branch can adjudicate the dispute.

[Reproduced as written.]

The language in Policy Guideline #49 is mandatory.

In this case, I have examined the documents submitted by the Tenants. Although they have provided copies of Canada Post receipts in support of service of the Notice of Dispute Resolution Proceeding, they have not included a Proof of Service Tenant's Notice of Direct Request Proceeding as required under Policy Guideline #49. This form would include a statement establishing service of the Notice of Dispute Resolution Proceeding and supporting documents on the Landlord. Without this accompanying statement, I find that I am not able to confirm that the required documents were served on the Landlord in accordance with the *Act* and Policy Guideline #49.

For the above reasons, I order that the Tenants' request for a monetary order for the return of the security deposit is dismissed with leave to reapply. This is not an extension of any applicable time limit established under the *Act*.

As the Tenants have not been successful, I order that the Tenants' request to recover the filing fee is dismissed without leave to reapply.

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: April 22, 2021

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Residential Tenancy Branch