



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      **MNSD, MNETC, FFT**

### **Introduction**

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for the return of the security deposit that the Landlord is holding without cause pursuant to Sections 38 and 62 of Act;
2. An Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property pursuant to Section 51 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. Two Tenants attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The RTB issued the Notice of Dispute Resolution Proceeding package to the Tenants on July 7, 2022 (the "NoDRP package"). The female Tenant testified that she personally served the Landlord with the NoDRP package for this hearing on a date shortly after the

three day timeframe set out by the RTB. The Tenant said she received the Landlord's signature on her copy attesting to service, but the Tenants had not uploaded this piece of evidence. This service was not witnessed, and the Landlord did not attend the hearing. I find that service was not effected and I dismiss the Tenants' application with leave to re-apply.

### Issues to be Decided

1. Are the Tenants entitled to an Order for the return of the security deposit that the Landlord is holding without cause?
2. Are the Tenants entitled to an Order for compensation from the Landlord related to a Notice to End Tenancy for Landlord's Use of Property?
3. Are the Tenants entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions presented to me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants confirmed that this periodic tenancy began on October 31, 2019. Monthly rent was \$3,400.00. A security deposit of \$1,625.00 was collected at the start of the tenancy and is still held by the Landlord.

The male Tenant testified that he personally served the Landlord with their forwarding address in writing. The uploaded letter is dated May 31, 2022. The Tenants did not upload a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form #RTB-41 attesting to service of their forwarding address.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

**Consequences of not attending the hearing:** *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

RTB Policy Guideline #12-Service Provisions discusses ways in which documents pertaining to a tenancy or a dispute resolution proceeding are required or permitted to be given or served on a party. All the RTB policy guidelines can be viewed on-line. Policy Guideline #12 states:

## **5. SERVICE OF DOCUMENTS GENERALLY**

...

*Failure to serve documents in a way recognized by the Legislation may result in the director determining that the party was not properly served with the document.*

...

***by sending a copy of the document by ordinary mail or Registered Mail to the address at which the person to be served resides at the time of mailing***

*Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. This includes Express Post, if the signature option is used. If Registered Mail or Express Post is used, a record of the mail being sent and received can be obtained, which is not available with ordinary mail.*

...

## **15. PROOF OF SERVICE**

*Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.*

*Where proof of service is required, the person who actually served the documents must either:*

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

*Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

*Proof of service by Registered Mail or Express Post with signature option should include the original Canada Post Registered Mail/Express Post receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report. (emphasis mine)*

The Tenants personally served the Landlord with their NoDRP package and their forwarding address; however, they did not provide a proof of service of these important documents. I find that the Tenants' forwarding address and NoDRP package were not properly served on the Landlord. I dismiss the Tenants' application with leave to re-apply.

For the benefit of the Tenants, they may wish to discuss with an Information Officer at the RTB the options available to them to properly serve and prove service of legal documents for this matter. An Information Officer can be reached at:

5021 Kingsway

Burnaby, BC

Phone: 604-660-1020 (Lower Mainland)

250-387-1602 (Victoria)

1-800-665-8779

Website: <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies>

As the Tenants were not successful in their claim, I do not grant them recovery of the application filing fee.

Conclusion

The Tenants' application is dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 13, 2023

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Residential Tenancy Branch