



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      **MNSD FFT**

### Introduction

This hearing was convened by way of conference call in response to the Applicants' application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") in which the Applicants seek:

- an order to seek the return of the Applicants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for the Application from the Respondent pursuant to section 72.

The Respondent did not attend this hearing scheduled for 1:30 pm. I left the teleconference hearing connection open for the entire hearing, which ended at 1:45 pm, in order to enable the Respondent to call into this teleconference hearing. One of the two Applicants ("HH") attended the hearing and she was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that HH and I were the only ones who had called into this teleconference.

### Preliminary Matter – Service of Notice of Dispute Resolution Proceeding on Respondent

HH stated the Applicants went to the rental address several days before the tenancy was to commence and met with the Respondent. HH stated the Respondent told them that the person ("DF") they entered into the tenancy agreement was his father and that he had passed away. HH stated the Respondent was unwilling to allow the Applicants to move into the rental unit on the date stated in the tenancy agreement. HH stated that

the Applicants were told they could move in for one month but they would need to move out because the house was being put up for sale. HH stated the Applicants were told their security deposit would be returned to them but they waited months and have not heard from the Respondent.

When I asked, HH stated they did not have any evidence on whether the Respondent has been appointed as the personal representative for the estate of DF by the Supreme Court of British Columbia to manage the estate of DF. HH did not have any proof the Respondent received the NDRP or the Applicants' evidence. As such, I cannot determine whether the correct respondent(s) have been named as the personal representative(s) of the estate and whether he/she/they received the NDRP. Although I contemplated adjourning this hearing to allow the Applicants the opportunity of providing additional evidence in support of their claim, I am unable to do so. HH did not submit any evidence to demonstrate the Applicants served the personal representative of the estate with their forwarding address and requesting that the Applicants' security deposit be returned to them ("Notice"). As such, there is no evidence the Applicants have complied with the requirements of section 38(1) of the Act. Until this requirement has been satisfied, the personal representative(s) of the estate are not required, within 15 days of service of the Notice, to return the security deposit to the Applicants or, alternatively, make an application for dispute resolution to claim against the security deposit. For this reason, the Application cannot be successful.

Based on the foregoing, I dismiss the Application in its entirety with leave to reapply. The Applicants have the option of making a new application for dispute resolution after they have served the personal representative(s) with the Notice.

It is recommended that the Applicants refer to the following *Residential Tenancy Policy Guidelines* for further information that are relevant to the claims made in their Application, naming parties in an application for dispute resolution, service of documents on an estate of a deceased person and procedures for seeking the return of security and pet damage deposits:

1. *Residential Tenancy Policy Guideline 12 - Service Provisions* under the heading "Service on a Deceased Person".
2. *Residential Tenancy Policy Guideline 43 - Naming Parties: under the heading "D. Naming an Estate of a Person who has Died"*
3. *Residential Tenancy Policy Guideline 49 – Tenant's Direct Request – Deposits"*

The Applicants also have the option of calling the Contact Centre of the Residential Tenancy Branch and the Tenant Resource and Advisory Centre for further information regarding making a claim for the return of their security deposit in these circumstances.

### Conclusion

The Application is dismissed in its entirety.

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: May 17, 2023

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Residential Tenancy Branch