



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNSD, MNETC, RPP, FFT

### Introduction

The estate of the tenants [the 'Estate'] applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution. The Estate asks me for the following orders against the landlords.

1. Compensation in the amount of \$5,000.00 for disposing of personal property [the 'Compensation Claim'].
2. Return of the \$550.00 security deposit and \$200.00 pet deposit [the 'Deposits'].
3. Compensation in the amount of \$3,300.00 for not using the rental unit for the stated purpose when issuing a Two-month Notice to End Tenancy [the 'Notice'].
4. Return of personal property [the 'Return Claim'].
5. Reimbursement for the \$100.00 filing fee for this application.

The landlords appeared at the hearing on 8 May 2023. The Estate appeared by way of an agent: the father of the deceased tenants [the 'Father'].

The landlords took no issue with the Father representing the Estate, and so I permitted this representation *per* rule 6.7 of the RTBs Rules of Procedure.

### Issues to be Decided

Should the landlords compensate the Estate for disposing of the personal property of the deceased tenants [the 'Property']?

Should the landlords return the Deposits to the Estate?

Did the landlords fail to use the rental unit for the stated purpose when issuing the Notice?

Should the landlords return the Property to the Estate?

Should the landlords reimburse the Estate for the cost of filing this application?

### Background and Evidence

The parties agreed that the tenants had resided in the rental unit, and paid a total of \$750.00 as Deposits.

The landlords told me that the Deposits were \$550.00 for security, and \$200.00 for pets.

The parties also agreed that the tenancy came to an end on 13 November 2021 when the tenants died in the rental unit.

The police attended the unit upon learning of the death of the tenants. The police asked the landlords to care of the tenants' pet. But on discovering a phone number on the tag around the pet's neck, the police called that number. According to the landlords, a man who often visited the tenants and had taken care of the tenant's pet in the past [the 'Friend'], answered the call, and agreed to come and collect the pet. He did this later that night.

When the Friend arrived to pick up the pet, he offered to collect the Property, and clean the unit. The landlords accepted this offer.

Several days later, on 19 November, the Friend returned to the unit and, as agreed, collected the Property, and cleaned the unit.

While this was happening, the landlords received a call from the Father. The landlords said that the tenants had told them that they were estranged from their Father, with whom they had not had contact since they were teenagers. This was the first time the landlords had spoken with the Father. The Father asked for information about the tenancy and for the return of the Deposits.

Because of the tenants' comments to the landlords about their relationship with their Father, the landlords were wary of these requests. They refused to provide information

or the Deposits, and they told the Father that the Friend was at the unit to collect the Property.

The Father insisted that the Friend had no right to do so, but the landlords did not contact the Friend to tell him to stop removing the personal property.

The landlords told me that they did not know what to do with the Deposits: they had offered the Deposits to the Friend, but the Friend refused them. And so the landlords have kept the Deposits. The landlords did say that they had to replace a carpet and flooring in the unit because of damage to the carpet made by the tenants' pet, and that the cost of those replacements far exceeded the pet-portion of the Deposits.

Sometime later, the Friend commenced an action against the Father in the Supreme Court of British Columbia [the 'Court Action'].

In March 2022, this Court Action was resolved by way of a consent order. The Estate proffered a copy of this consent order at the hearing. This order confirmed that the Court Action was in the matter of the estate of the tenants. It also had over a dozen clauses, some of which are:

1. the Friend will control the disposition of the cremated remains of the tenants;
2. the Friend will have custody of certain pets;
3. the Friend will take ownership of a certain vehicle;
4. the Father will not make any claim to certain realty;
5. the Friend shall provide the Father with an inventory of the Property [the 'Inventory']; and
6. all other claims arising from the Court Action will be dismissed as if decided on their merits.

I asked the Father if the 'other claims arising from the Court Action' included a claim by him (on behalf of the Estate) to the Property, and the Father confirmed that was the case.

The Father told me that he had heard from someone that the landlords had issued the Notice while the tenants were still alive. The landlords denied issuing the Notice. There was no other evidence of the Notice.

When I asked the Father about the valuation of the Compensation Claim, he conceded that value was a 'soft number'. He had no real knowledge of what comprised the

Property, other than a video of the interior of the unit, showing furniture and some belongings; and affidavits made by another friend of the tenants about what the tenants owned, which the Father filed as part of the Court Action [the 'Affidavits'].

The Father did not provide a copy of the Inventory at this hearing, nor did he provide copies of the Affidavits.

The landlords told me that the Friend had taken all of the Property: they no longer have custody of any of it.

### Analysis

#### *The Notice*

I accept the landlords' evidence that they never issued the Notice (in no small part because the Estate has no evidence that a Notice was issued), and so I dismiss this claim.

#### *The Compensation Claim and the Return Claim*

The Estate argues that the landlords improperly surrendered the Property to the Friend, and so they are liable for the value of the Property.

The Estate, however, has almost no evidence of the value of the Property, other than what amounts to a guess. The Estate apparently had access to better evidence of what comprised the Property (that is, the Affidavits and the Inventory), but chose not to produce it for this application.

I am not prepared to grant the Compensation Claim on such a paucity of evidence.

The Compensation Claim is intertwined with the Return Claim. Both claims really turn on the question, 'Did the landlords do the right thing when they allowed the Friend to take the tenants' Property after they died?'

There is a legal definition of 'good faith' that describes it as a 'state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation'. The Supreme Court of British Columbia has, in

the past, adopted this definition of 'good faith' [*vide Gray v. Owners Strata Plan*, 1994 CanLII 2422 (BCSC)].

I accept that, in surrendering the Property to the Friend, the landlords were acting in good faith. Consider:

- They knew the Friend to be someone with whom the tenants entrusted (at least) their pet.
- From the landlords' perspective, the police had contacted the Friend in the context of dealing with the immediate aftermath of the death of the tenants.
- Though the Father spoke to the landlords while the Property was being removed, the landlords had a reasonable hesitation in acceding to the Father's requests in the context of what the landlords knew of the tenants' relationship with their Father.

While it may have been prudent for the landlords to call a halt to the removal of the Property when hearing from the Father, and permitting time for the issue to be conclusively determined, I do not find the landlords lacked good faith when they permitted the removal of the Property to continue.

From the evidence, my impression is that the real issue is that the Friend has the Property, and the Father and or the Estate have had trouble getting it from the Friend. Part of the Court Action alluded to this trouble. The Father indicated to me that his claim (and or that of the Estate) to the Property may have been dismissed last year as part of the Court Action. If that is true, then the Father and or Estate cannot now advance either the Compensation Claim or the Return Claim. And I certainly have no jurisdiction to compel the Friend to return the Property to the Estate.

In any event, I find that the landlords acted in good faith in surrendering the Property to the Friend; and they no longer have custody of the Property. If the Estate wishes to retrieve the Property, then the Estate must seek it from the Friend (unless the resolution of the Court Action now precludes that).

Accordingly, I do not accept the Return Claim either.

*The Deposits*

Regarding the Deposits, the landlords accept that this application is brought on behalf of the Estate (that is, on behalf of the deceased tenants). And I do not have before me an application by the landlords to retain any of the Deposits. So, I find that the landlords must return the Deposits to the Estate.

### Conclusion

I dismiss the Compensation Claim and the Return Claim without leave to re-apply.

I order that the landlords pay to the Estate \$750.00 as return of the Deposits. As the Estate succeeded in this portion of the application, I also order that the landlords reimburse the Estate for the filing fee, in the amount of \$100.00.

The Estate must serve this order on the landlords as soon as possible. If the landlords do not comply with my order, then the Estate may file this order in the Small Claims Division of the Provincial Court of British Columbia. Then the Estate can enforce my order as an order of that court.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the *Residential Tenancy Act*.

Dated: 11 May 2023

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Residential Tenancy Branch