



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR, FFT

### Introduction

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 by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 6, 2020, the tenant personally served the landlord the Notice of Direct Request Proceeding. The tenant provided a copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the Notice of Direct Request Proceeding was in fact sent by registered mail. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on March 11, 2020, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a Rental Application form which was signed by the tenant on December 30, 2019; and
- A copy of a Word document saying there was no written tenancy agreement in place and all arrangements were done verbally.

## Analysis

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.

Section 38(1) of the *Act* states that a landlord must either return the deposit or make an application through the Residential Tenancy Branch requesting to keep the deposit within fifteen days of the tenancy ending and the landlord receiving the tenant's forwarding address in writing.

I find that the tenant has not submitted a copy of a letter, a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit form, or a Condition Inspection Report showing that the tenant provided their forwarding address to the landlord in writing.

The tenant has submitted a Rental Application form indicating their address at the time of applying for the rental. However, I find that an address provided to the landlord before the tenancy was established is not adequate notice of a forwarding address.

The tenant has also indicated in their Application for Dispute Resolution that they telephoned the landlord on January 19, 2020 to request the return of the deposit. I find that a phone call is not a recognized method of service under section 88 of the *Act*.

I find the tenant has not provided the landlord with their forwarding address in writing and for this reason, the tenant's application for a Monetary Order for the return of the deposit is dismissed with leave to reapply.

The tenant must issue the written forwarding address to the landlord, using one of the methods of service indicated in section 88 of the *Act*.

If the landlord does not file an Application for Dispute Resolution or return the deposit within fifteen days of receiving the written forwarding address, the tenant may reapply to request the return of the deposit.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

I also note that Policy Guideline #49 on Tenant's Direct Request states that a written tenancy agreement is a requirement of the Direct Request process. The tenant has

indicated that there was no tenancy agreement signed. Therefore, if the tenant wishes to reapply for the return of their deposit, they must do so using the regular participatory process.

Conclusion

I dismiss the tenant's application for a Monetary Order for unpaid rent with leave to reapply.

I dismiss the tenant's application to recover the filing fee paid for this application 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: March 12, 2020

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Residential Tenancy Branch