



# Dispute Resolution Services

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

The tenants submitted three signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on March 13, 2020, the tenants sent the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of two envelopes containing the Canada Post Tracking Numbers to confirm these mailings.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage deposit pursuant to sections 38 and 67 of the *Act*?

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

### Background and Evidence

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

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by Landlord S.F.C., Landlord W.S.N., and the tenants on October 26, 2018, indicating a monthly rent of \$2,100.00 and a security deposit of \$1,050.00, for a tenancy commencing on October 27, 2018;
- A copy of a cheque from the tenants to the landlords dated October 6, 2018, showing a discrepancy in the dollar amount (\$1,250.00) and the written amount (One thousand fifty) of security deposit paid;

- A copy of a letter from the tenants to the landlords providing the forwarding address and requesting the return of the deposit;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlords by registered mail at 1:45 pm on February 8, 2020;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the forwarding address was sent to the landlords on February 8, 2020;
- A copy of a cheque from the landlords to the tenants in the amount of \$1,050.00 for the return of the deposit less a \$200.00 deduction for cleaning; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenants, the partial amount reimbursed by the landlords, and indicating the tenancy ended on January 31, 2020.

### 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.

In this type of matter, the tenants must prove they served the landlords with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89 (1) and (2) of the *Act* which permit service "by sending a copy by registered mail to the address at which the person resides..."

The tenants must also prove that they served each landlord with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*. Policy Guideline #12 on Service Provisions provides the following requirement:

*"All parties named on an application for dispute resolution must be served separate notice of proceedings, including any supporting documents submitted with the application, as set out in the Legislation"*

I find that one of the envelopes submitted by the tenants shows that the tenants have placed the Notices of Direct Request Proceeding for Landlord S.F.C. and Landlord

W.S.N. in one envelope with multiple persons named. In an *ex parte* hearing, I find that I am not able to confirm service of the Notices of the Direct Request Proceeding to Landlord S.F.C. and Landlord W.S.N. individually as required by sections 71 and 89 of the *Act*.

I also find that the business landlord's name does not appear on the tenancy agreement submitted by the tenants. There is no evidence or documentation showing that the business landlord is an agent of the owners or is otherwise responsible for any payments owing for this tenancy.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancies listed above raise questions that cannot be addressed in a Direct Request Proceeding.

For these reasons, the tenants' application for a Monetary Order for double the return of the security deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the tenants' application for a Monetary Order for the return of double their security deposit with leave to reapply.

I dismiss the tenants' 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 17, 2020

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Residential Tenancy Branch