



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR

### 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 seeking the return of her security deposit.

The tenant submitted two signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” forms which declare that on April 04, 2020 the tenant served each of the above-named landlords with the Notice of Direct Request Proceeding, along with copies of supporting documents, by way of personal service via hand-delivery. The forms do not depict that the landlords acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms, nor do the forms include the name and signature of a witness to demonstrate that the service of the documents was witnessed.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of her security deposit pursuant to section 38 of the *Act*?

### Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the

Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and 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 landlord 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.

On March 30, 2020, pursuant to the *Emergency Program Act*, a Ministerial Order was authorized by the Minister of Public Safety and Solicitor General, described as “Ministerial Order No. M089, Residential Tenancy (COVID-19) Order, MO 73/2020 (*Emergency Program Act*)”, which will hereafter be referred to as *Ministerial Order M089*.

Section 9 of the *Ministerial Order M089* provides the following with respect to the personal service of documents:

Personal service

- 9      Despite sections 88 (a), (b) and (e) and 89 (1) (a) and (b) and (2) (a) and (c) of the *Residential Tenancy Act* or any other section of the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement, a person must not give or serve any document required to be given or served under the *Residential Tenancy Act*, the *Residential Tenancy Regulation* or any term of a tenancy agreement by leaving a copy of the document with a person.

Therefore, based on the foregoing, I find that the tenant is not permitted to serve the Notice of Direct Request Proceeding documents to the respondent landlords by way of personal service via hand-delivery. Additionally, the proof of service forms do not depict that the landlords acknowledged receipt of the Notice of Direct Request Proceeding documents by providing their respective signatures on the Proof of Service forms, nor do the forms include the name and signature of a witness to demonstrate that the service of the documents was witnessed.

On the tenant’s Application for Dispute Resolution by Direct Request, the tenant provided that she served the Notice of Direct Request Proceeding documents to the landlords by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the tenant must provide evidentiary material, in the form of a Canada Post Registered Mail receipt or ticket which includes the tracking number, as well as the name of the person to whom the registered mail item was addressed, as proof of service via registered mail.

The tenant has not provided any documentary evidence, such as a Canada Post customer receipt or registered mail ticket containing the tracking number, to confirm the mailing and to demonstrate that the landlords were served with the Direct Request Proceeding documents by way of registered mail.

I find that there is no evidentiary material before me to prove that the tenant served the Direct Request Proceeding documents by way of registered mail. The tenant has not provided a Canada Post Registered Mail receipt or registered mail ticket with a tracking number, and furthermore, the tenant has not included the name and signature of a witness on the Proof of Service form to confirm that service of the documents was carried out by way of registered mail. Therefore, I find that I cannot confirm that the landlords have been served with the Direct Request Proceeding documents in accordance with the *Act*.

Based on the foregoing, I find that the tenant has not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act*, and in accordance with *Ministerial Order M089*. Therefore, I dismiss the tenant's Application for Dispute Resolution for a Monetary Order seeking the return of her security deposit, with leave to reapply.

It remains open to the tenant to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #39, and the requirements for service of documents, as prescribed in Section 89 of the *Act* and *Ministerial Order M089*, can be met, or, in the alternative, the landlord may wish to submit an application for dispute resolution to be heard via a participatory hearing.

### Conclusion

I dismiss the tenant's Application for Dispute Resolution for a Monetary Order seeking the return of her security deposit, with 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: April 15, 2020