



# 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 the security deposit (the deposit).

The tenants submitted a copy of an e-mail sent to the landlord containing as an attachment a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 3, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail. The e-mail provided by the tenants also includes an attachment of the Notice of Dispute Resolution Proceeding – Direct Request.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security 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*?

### 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 landlord with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice. Policy Guideline #49 on Tenant's Direct Requests provides that the Notice of Dispute Resolution package must contain:

- 1) The Notice of Dispute Resolution Proceeding which includes the Application for Dispute Resolution;
- 2) A copy of the signed tenancy agreement;
- 3) The forwarding address letter, the RTB-47 form, or the condition inspection report, if this was used to provide the forwarding address to the landlord;
- 4) The Proof of Service of Forwarding Address (Form RTB-41);
- 5) The Tenant's Direct Request Worksheet (Form RTB-40); and
- 6) Any other evidence submitted by the applicant.

I find the copy of the e-mail submitted by the tenants only included the Notice of Dispute Resolution Proceeding and a Proof of Service Tenant's Notice of Direct Request Proceeding. I find that the tenants have not served the landlord with all the required supporting documents as detailed in Policy Guideline #49.

As I am not able to confirm service of the complete Notice of Direct Request Proceeding package to the landlord, which is a requirement of the Direct Request process, the tenants' application for a Monetary Order for 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 the 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: April 15, 2020

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Residential Tenancy Branch