



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDB-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 the security deposit and the pet damage deposit (the deposits).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 17, 2020, the tenant sent Landlord K.S. the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that Landlord K.S. will be deemed to have been served with the Direct Request Proceeding documents on April 22, 2020, the fifth day after their registered mailing.

The tenant submitted a second signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 17, 2020, the tenant served Landlord D.M. the Notice of Direct Request Proceeding. The tenant provided a copy of an e-mail including attachments of the supporting documents to confirm this service.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be served in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received if:

- The person acknowledges having received the e-mail;
- The person replies to the e-mail; or
- The sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenant has provided a copy of an outgoing e-mail to confirm the documents were sent by e-mail on April 17, 2020.

However, the tenant has not submitted a copy of an e-mail reply from Landlord D.M., an acknowledgement from Landlord D.M. that they received the e-mail, or a copy of e-mails exchanged between the tenant and Landlord D.M. to demonstrate that the e-mail accounts were regularly used as a method of communication for tenancy issues.

For these reasons, I find I am not able to determine whether the tenant's e-mail service to Landlord D.M. can be considered received in accordance with the Director's Order.

As I am not able to confirm service of the Notice of Direct Request Proceeding to Landlord D.M., I will only proceed with the portion of the application naming Landlord K.S. as a respondent.

### Issue(s) to be Decided

Is the tenant 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*?

Is the tenant 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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlords and the tenant on October 1, 2017, indicating a monthly rent of \$1,500.00, a security deposit of \$750.00, and a pet damage deposit of \$750.00, for a tenancy commencing on October 1, 2017;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the Forwarding Address) dated March 27, 2020;
- A copy of a witnessed 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 placed in the landlords' mailbox or mail slot at 3:15 pm on March 27, 2020; 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 deposits paid by the tenant, the deductions authorized by the tenant, and the partial amount reimbursed by the landlords.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the landlords were deemed served with the Forwarding Address on March 30, 2020, three days after it was placed in the mailbox or mail slot.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the Forwarding Address, the landlord may either repay the deposits or make an application for dispute resolution claiming against the deposits.

I find that the fifteenth day for the landlords to have either returned the deposits or filed for dispute resolution was April 14, 2020.

I further find that the tenant applied for dispute resolution on April 13, 2020, before the landlords' last day to comply with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was April 15, 2020.

I find that the tenant made their application for dispute resolution too early.

Therefore, the tenant's application for a Monetary Order for the return of the security deposit and the pet damage deposit is dismissed with leave to reapply.

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.

### Conclusion

I dismiss the tenant's application for a Monetary Order for the return of the security deposit and pet damage deposit 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: April 17, 2020