



# 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 two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on June 19, 2020, the tenants sent each of the landlords the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have been served with the Direct Request Proceeding documents on June 24, 2020, the fifth day after their registered mailing.

### 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*?

### 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 one of the landlords and the tenants on January 6, 2020, indicating a monthly rent of \$2,200.00 and a security deposit of \$1,100.00, for a tenancy commencing on January 1, 2020;

- A copy of an e-mail from the tenants to the landlords dated May 31, 2020, 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 e-mail at 11:41 am on May 31, 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 deposit paid by the tenants and indicating the tenancy ended on May 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 tenant must prove they served the landlord the forwarding address in accordance with section 88 of the *Act*.

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.

I note that the tenants sent the landlords an e-mail on May 31, 2020 providing a forwarding address.

However, I find that the tenants have not submitted a copy of an e-mail reply from the landlords, an acknowledgement from the landlords that they received the e-mail, or a copy of previous e-mails exchanged between the landlords and the tenants to demonstrate the e-mail accounts were regularly used for tenancy issues.

I find I am not able to determine whether the tenants' forwarding address can be considered received in accordance with the Director's Order.

Furthermore, I find that the forwarding address provided by the tenants is incomplete as it does not include the city of the forwarding address.

For this reason, the tenants' application for a Monetary Order for the return of the security deposit based on the forwarding address of May 31, 2020, is dismissed without leave to reapply.

The tenants must reissue the forwarding address providing the full details to the landlords and serve it in one of the ways prescribed by section 88 of the *Act* if the tenants want to apply through the Direct Request process.

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 based on the forwarding address dated May 31, 2020 without 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: July 06, 2020

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Residential Tenancy Branch