



# 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 Tenants for a Monetary Order seeking the return of their security deposit and pet damage deposit (collectively, the “deposits”).

### Issues to be Decided

Are the Tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Are the Tenants entitled to a monetary award for the return of all or a portion of their pet damage deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Are the Tenants entitled to recover the filing fee for this application from the landlord 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 the tenants, indicating a monthly rent of \$1,375.00, a security deposit of \$650.00, and a pet damage deposit of \$650.00, for a tenancy commencing on October 1, 2017;



- A copy of a notice to end tenancy dated May 28, 2020, indicating the tenancy would end on June 30, 2020 and providing the forwarding address for the return of the deposits;
- 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 served to the landlord on May 28, 2020;
- Email correspondence between the Tenants and Landlord dated May 28, 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 tenants.

The Tenants submitted signed Proof of Service Tenant's Notice of Direct Request Proceeding forms, declaring that on July 20, 2020 they sent each Respondent 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 this mailing.

### 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 landlord to participate, there is a much higher burden placed on the tenant 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 tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, 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 tenant 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 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.



On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

*a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:*

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*
- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

On the matter of service, I find the Tenants have completed and submitted the Proof of Service of the Tenant’s Notice of Direct Request Proceeding form (form RTB-50) as required under the provisions of Policy Guideline #49. Further, I find that the Tenants have sufficiently established that the Direct Request Proceeding documents have been served in accordance with the *Director’s Order*, the *Act*, and Policy Guideline #49, and further find that I am able to confirm service of the Notice of Direct Request Proceeding to the Landlords, which is a requirement of the Direct Request process. Based on the evidence provided by the Tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have been served with the Direct Request Proceeding documents on July 25, 2020, the fifth day after their registered mailing.

With respect to timelines for repayment of deposits, 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 the Tenants' forwarding address was sent to the Landlord by e-mail on May 28, 2020, and that the email was received by the Landlord on the same date as evidenced by reply email. I also find the tenancy ended on June 30, 2020; accordingly, as of June 30, 2020 the tenancy had ended, and the Landlord was in receipt of the forwarding address. In accordance with section 38 of the *Act*, July 15, 2020 was the Landlord's last day to effect return of the Tenants' deposit. I find the Tenants applied for dispute resolution on July 16, 2020.

In accordance with section 90(a) of the *Act*, a document given by mail is deemed received on the 5<sup>th</sup> day after it was mailed. It is possible on the facts before me, that the Tenants were not in receipt of the deposit when they filed on July 16, 2020, even though the Landlord may have effected the return of the deposit within the legislated fifteen days. Accordingly, I find the Tenants made their application for dispute resolution too early and should have waited until after July 20, 2020, in accordance with section 90(a) of the *Act*, to bring their application for dispute resolution.

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

As the Tenants were not successful in this application, I find 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 seeking the return of their security deposit and pet damage deposit, with leave to reapply.

I dismiss the Tenants' request to recover the \$100.00 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 22, 2020

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Residential Tenancy Branch