



# 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.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding form which declares that on August 21, 2020, the tenants served the landlord the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of a Canada Post transaction receipt containing a Tracking Number, and a Canada Post "Xpresspost" mail ticket containing a tracking number, to confirm this mailing.

### Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit and pet damage deposit pursuant to section 38 of the *Act*?

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 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 landlord to participate, there is a much higher burden placed on 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.

In the Direct Request process, the tenant must prove they served the landlord with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per subsections 89(1) and (2) of the *Act*, which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

I find that the tracking number listed on the Canada Post transaction receipt and Xpresspost mail ticket provided by the tenants accompanying the “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form is for an item sent by Canada Post’s Xpress Post service, which may or may not require a signature from the intended recipient to confirm delivery of the document to the person named as the respondent.

In this case, on the Canada Post website, Canada Post’s Online Tracking System shows that a signature was not required for the delivery of this Xpress Post mailing since a signature option for confirmation of delivery was not requested; therefore, the mailing does not meet the definition of registered mail as defined under the *Act*.

Based on the evidentiary material provided by the tenants, I find that the tenants have not demonstrated that a signature was received from the intended recipient for the delivery of this Xpress Post mailing and, as such, this mailing does not meet the definition of registered mail as defined under the *Act*.

I further find that there is no evidence before me that establishes that the tenants were given leave to serve the Direct Request Proceeding documents in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Since I find that the tenants have not served the landlord with notice of this application in accordance with section 89 of the *Act*, I dismiss the tenants' application for a Monetary Order seeking the return of their security deposit and pet damage deposit 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

The tenants' application for a Monetary Order for the return of their security deposit and pet damage deposit is dismissed with leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed 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: August 28, 2020

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Residential Tenancy Branch