



# 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 tenant for a Monetary Order for the return of the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 23, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security 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*?

### 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 with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

When serving by registered mail, the Proof of Service Tenant's Notice of Direct Request Proceeding form provides the following instruction: "*Please attach a completed Canada Post registered mail receipt*"

The tenant has indicated they sent the Notice of Direct Request Proceeding to the landlord by registered mail and typed the Tracking Number onto the Proof of Service Tenant's Notice of Direct Request Proceeding form. However, I find that the tenant has not provided a copy of the Canada Post Customer Receipt itself, which is a requirement of the Direct Request process.

As the tenant has not provided the required evidence to establish service of the Notice of Direct Request Proceeding to the landlord, the tenant's application for a Monetary Order for the return of the security 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 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: October 09, 2020

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Residential Tenancy Branch