



# 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 the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post receipt containing the Tracking Number to confirm this mailing took place on November 4, 2020. Based on the written submissions of the tenant 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 November 9, 2020, the fifth day after their registered mailing.

### 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*?

### 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 landlord and the tenant on August 6, 2019, indicating a monthly rent of \$1,700.00 and a security deposit of \$850.00, for a tenancy commencing on September 1, 2019;

- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated October 5, 2020;
- 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 landlord by registered mail and handed to the landlord in person;
- A copy of a Canada Post receipt containing the Tracking Number to confirm the forwarding address was sent to the landlord on October 6, 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 tenant and indicating the tenancy ended on August 31, 2020.

### Analysis

I note that, on the first page of the Proof of Service of the Forwarding Address form, the tenant has indicated they personally served the landlord a copy of the forwarding address on September 5, 2020. However, I find the tenant has not submitted a copy of a forwarding address dated September 5, 2020. The tenant also has not submitted any evidence containing the signature of a witness or of the landlord to confirm a forwarding address was provided on September 2020.

For this reason, I find I cannot consider the tenant's application based on a forwarding address given on September 5, 2020.

However, the tenant has submitted documentary evidence demonstrating that a forwarding address was sent to the landlord by registered mail on October 6, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the forwarding address on October 11, 2020, five days after its registered mailing.

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 landlord to have either returned the deposit or filed for dispute resolution was October 26, 2020.

I also find that the tenant applied for dispute resolution on October 23, 2020, before the landlord's last day to comply with the provisions of section 38(1) of the *Act*.

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 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: November 24, 2020

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Residential Tenancy Branch