



# 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 double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on December 4, 2020, the tenant served the landlord the Notice of Direct Request Proceeding by handing the documents to Person J.C. The tenant had Person J.C. sign the Proof of Service Tenant's Notice of Direct Request Proceeding to confirm this service.

### 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

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$800.00 and a security deposit of \$400.00, for a tenancy commencing on April 1, 2020;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated November 23, 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;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the forwarding address was sent to the landlord by registered mail; and
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended August 31, 2020.

### Analysis

In this type of matter, the tenant must prove they served the landlord the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89(1) of the *Act* which permits service by either leaving a copy with the person or their agent or sending a copy by registered mail to the address at which the person resides or carries on business as a landlord.

I find that the tenant has served the Notice of Direct Request Proceeding by leaving it with Person J.C.; however, there is no indication in the documentation that Person J.C. is the landlord's agent.

Furthermore, section 38(1) of the *Act* states that a landlord has fifteen days from the day they receive the forwarding address to either return the deposit to the tenant or file an application requesting the keep it.

I find the date of the tenant's forwarding address is November 23, 2020 and the tenant filed their Application for Dispute Resolution on November 25, 2020, two days later. I find the tenant has not provided the landlord the full fifteen days to file a dispute or return the deposit.

For these reasons, 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: December 23, 2020

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Residential Tenancy Branch