



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### 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 January 5, 2021.

### 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*?

### 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 an occupant ledger showing the amounts owing and paid during this tenancy; and
- A copy of an e-mail sent from the tenant to the landlord dated November 29, 2020, providing the forwarding address and requesting the return of the deposit.

## 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.

Section 59 of the *Act* establishes that an Application for Dispute Resolution must “include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.”

Policy Guideline #49 on Tenant’s Direct Request provides the following requirements:

When making a request, an applicant must provide:

- A copy of the signed tenancy agreement showing the initial amount of rent and the amount of security deposit and/or pet damage deposit required;
- If a pet damage deposit was accepted after the tenancy began, a receipt for the pet damage deposit;
- A copy of the forwarding address given to the landlord;
- A completed Proof of Service of Forwarding Address;
- A Tenant’s Direct Request Worksheet; and
- The date the tenancy ended.

I find that the tenant has not submitted a copy of a written tenancy agreement, a Proof of Service of Forwarding Address form, or a Tenant’s Direct Request Worksheet. I further find that I am not able to consider the tenant’s Application for Dispute Resolution without these documents which form a part of the Application.

I also note that section 38(1) of the *Act* states that the landlord has fifteen days to either repay the deposits or make an application for dispute resolution claiming against the deposits from the time the tenancy ends, and the landlord receives the forwarding address.

The tenant has indicated that the forwarding address was provided to the landlord by e-mail on November 29, 2020; however, e-mail is not a method of service permitted under section 88 of the *Act*. The tenant has also indicated that the forwarding address was provided in person on November 30, 2020.

If the landlord received the forwarding address on November 30, 2020, the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution would have been December 15, 2020.

I find that the tenant applied for dispute resolution on December 14, 2020, before the landlord's fifteen days would have elapsed, if the landlord received the forwarding address on November 30, 2020.

As the tenant submitted their Application too early and did not provide the documents required for a Direct Request Proceeding, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

### Conclusion

I dismiss the tenant's application for a Monetary Order for the return of the security deposit with 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: January 28, 2021

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Residential Tenancy Branch