



# 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 filed by the Tenant for a monetary order for the return of a security deposit and for recovery of the filing fee.

The Tenant submitted a signed Proof of Service Tenant Notice of Direct Request Proceeding which declares that the Tenant served with Landlord with the Notice of Dispute Resolution Proceeding and supporting documents by registered mail on March 13, 2021, which service was witnessed by K.B. The Tenant provided a copy of a Canada Post Customer Receipt containing a tracking number to confirm service in this manner. Pursuant to sections 89 and 90 of the *Act*, I find that the Landlord is deemed to have received these documents on March 18, 2021, five days after they were mailed.

### Issues to be Decided

1. Is the Tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee 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 parties on July 4, 2019, indicating a monthly rent of \$1,150.00, a security deposit of \$575.00, for a tenancy commencing on July 15, 2019;
- A copy of a statement signed by the parties confirming the Landlord received \$575.00 from the Tenant as a security deposit on July 4, 2019;
- A copy of an email from the Landlord to the Tenant dated February 13, 2021 in which the Landlord acknowledges receipt of a forwarding address but refuses to return the security deposit to the Tenant on account of unpaid amounts, damage, and because the address was not “a correct address”;
- A copy of a Tenant’s Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit dated March 12, 2021, with a copy of the same Canada Post Customer Receipt submitted as proof of service of the Proof of Service Tenant Notice of Direct Request Proceeding on March 13, 2021 referred to above;
- A copy of a Two Month Notice to End Tenancy for Landlord’s Use of Property dated November 13, 2020 with an effective date of February 28, 2021; and
- A copy of a Tenant’s Direct Worksheet confirming the Tenant paid a security deposit of \$575.00 to the Landlord on July 4, 2019, and that the Tenant vacated the rental unit on January 31, 2021 even though the effective date of a Two Month Notice to End Tenancy for Landlord’s Use of Property was February 28, 2021.

### 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 case, there is insufficient evidence before me to confirm that the Tenant provided the Landlord with a valid forwarding address in writing *before* the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit was served on March 13, 2021.

The Tenant did provide a copy of an email from the Landlord dated February 13, 2021. In it, the Landlord confirmed receipt of a forwarding address but refused to return the security deposit to the Tenant due to unpaid charges and damage, neither of which are valid reasons under the *Act* to withhold a security deposit and/or a pet damage deposit on receipt of a valid forwarding address. The Landlord also asserted that the address provided was not "a correct address" because it was a commercial location. The email did not include the address provided by the Tenant that the Landlord was responding to.

Considering the above, I find I am unable to confirm that the Tenant provided the Landlord with a valid forwarding address in writing *before* the Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit was served on March 13, 2021. As a result, I find that the Tenant's application is premature. I order that the Tenant's request for the return of the security deposit is dismissed with leave to reapply.

As the Tenant was not successful, I order that the Tenant's request to recover the filing fee is dismissed without leave to reapply.

### Conclusion

The Tenant's request for the return of the security deposit is dismissed with leave to reapply.

The Tenant's request for the recovery of the filing fee 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: March 30, 2021

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Residential Tenancy Branch