



# Dispute Resolution Services

Page: 1

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 on February 25, 2021, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this 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*?

### 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 April 20, 2017, indicating a monthly rent of \$1,200.00 and a security deposit of \$600.00, for a tenancy commencing on April 30, 2017
- A copy of an e-mail from the tenant to the landlord dated December 1, 2020 providing the forwarding address and requesting the return of the deposit
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended on November 30, 2020

### 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.

I have reviewed all documentary evidence and I find that the Proof of Service Tenant's Notice of Direct Request Proceeding form indicates that the Notice of Direct Request Proceeding was sent to the landlord on February 25, 2021. However, I find that the tenant did not submit their Application for Direct Request until March 10, 2021 and that that Notice of Direct Request Proceeding was not made available for service until March 16, 2021.

Furthermore, Policy Guideline #49 on Tenant Direct Requests requires the applicant to provide a completed Proof of Service of Forwarding Address form along with their Application. I find the tenant has not submitted a copy of a completed Proof of Service of Forwarding Address form.

In addition to these issues, I find there is a more impactful discrepancy with the tenant's Application for Dispute Resolution by Direct Request.

In this type of matter, the tenant must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord.

I find that the tenant has sent the forwarding address by e-mail, which is not a method of service as indicated above. The tenant has also not submitted a copy of a reply e-mail from the landlord or any other evidence to demonstrate that landlord received the forwarding address, despite using a method of service used that is not permitted by the *Act*.

I find that the forwarding address has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the tenant's application for the return of the security deposit based on the e-mail forwarding address dated December 1, 2020, without leave to reapply.

If the tenant wants to reapply through the Direct Request process, the tenant may reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act*.

Conclusion

The tenant's application for the return of the security deposit based on the e-mail forwarding address dated December 1, 2020, 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 31, 2021

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Residential Tenancy Branch