



# Dispute Resolution Services

Page: 1

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 tenants for a Monetary Order for the return of the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on March 21, 2021, the tenants sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the tenants 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 March 26, 2021, the fifth day after their registered mailing.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Are the tenants 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on July 12, 2019 and the tenants on July 15, 2019, indicating a monthly rent of \$2,100.00 and a security deposit of \$1,025.00, 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 January 10, 2021
- 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 at 3:26 pm on February 19, 2021
- A copy of a Canada Post confirmation of delivery containing the landlord's signature to confirm the forwarding address was received by the landlord on February 23, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenants and indicating the tenancy ended on December 28, 2020

### Analysis

I have reviewed all documentary evidence and I find that the Proof of Service of Forwarding Address form indicates that the tenants wrote their forwarding address on paper with signatures. However, I find the tenants submitted a forwarding address form into evidence, and not a true copy of the hand-written forwarding address provided to the landlord.

I find I am not able to confirm whether the version of the forwarding address provided to the landlord is a complete and valid forwarding address.

Furthermore, 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 deposit or make an application for dispute resolution claiming against the deposit.

If the landlord received a valid forwarding address on February 23, 2021, the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution would have been March 10, 2021.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent the deposit by mail on their last day, the tenants may not have received the deposit until March 15, 2021.

I find that the tenants applied for dispute resolution on March 12, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*.

For these reasons, the tenants' application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenants' 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: April 08, 2021

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Residential Tenancy Branch