



# 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 tenants to obtain monetary compensation for the return of double the security deposit (the deposit) and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on September 25, 2021.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 6, 2021, the tenants sent Landlord N.T. the Notice of Dispute Resolution Proceeding - Direct Request 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 Direct Request Proceeding documents were served on October 6, 2021 and are deemed to have been received by Landlord N.T. on October 11, 2021, the fifth day after their registered mailing.

The tenants submitted a second signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 7, 2021, the tenants personally served Landlord J.H. the Notice of Dispute Resolution Proceeding - Direct Request. The tenants had Landlord J.H. sign the Proof of Service Tenant's Notice of Direct Request Proceeding to confirm personal service.

Based on the written submissions of the tenants and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were duly served to Landlord J.H. on October 7, 2021.

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 Landlord N.T. and two of the tenants on May 17, 2020, indicating a monthly rent of \$3,500.00 and a security deposit of \$1,750.00, for a tenancy commencing on September 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 August 16, 2021
- A copy of a witnessed Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that the forwarding address was posted to Landlord N.T.'s door at 11:00 pm on August 16, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenancy ended on May 1, 2021

Analysis

Paragraph 12 (1) (b) of the Residential Tenancy Regulation establishes that a tenancy agreement is required to be "signed and dated by both the landlord and the tenant."

I find that Landlord J.H. has not signed the tenancy agreement, which is a requirement of the Direct Request process.

For this reason, I will only proceed with the portion of the tenants' application naming Landlord N.T. as a respondent.

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

Section 38(6) of the *Act* states that if the landlord does not return the deposit(s) or file a claim against them within the fifteen days, the landlord must pay the tenant double the amount of the deposit(s).

I have reviewed all documentary evidence and I find that the tenants paid a security deposit in the amount of \$1,750.00, as per the tenancy agreement.

I accept the following declarations made by the tenants on the Tenant's Direct Request Worksheet:

- The tenants have not provided consent for Landlord N.T. to keep all or part of the deposit
- There are no outstanding Monetary Orders against the tenants for this tenancy
- The tenants have not extinguished their right to the deposit in accordance with sections 24(1) and 36(1) of the *Act*

I accept the tenants' statement on the Tenant's Direct Request Worksheet that the tenancy ended on May 1, 2021.

In accordance with sections 88 and 90 of the *Act*, I find that the forwarding address was served on August 16, 2021 and is considered to have been received by Landlord N.T. on August 19, 2021, three days after its posting.

I accept the evidence before me that Landlord N.T. has failed to return the deposit to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposit by September 3, 2021, within the fifteen days granted under section 38(1) of the *Act*.

Based on the foregoing, I find that Landlord N.T. must pay the tenants double the amount of the security deposit in accordance sections 38(6) of the *Act*.

Therefore, I find that the tenants are entitled to a monetary award in the amount of \$3,500.00, the amount claimed by the tenants for double the security deposit.

As the tenants were partially successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenants a Monetary Order in the amount of \$3,600.00 for the return of double the security deposit and for the recovery of the filing fee for this application. The tenants are provided with this Order in the above terms and Landlord N.T. must be served with **this Order** as soon as possible. Should

Landlord N.T. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the portion of the tenants' application naming Landlord J.H. as a respondent 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: November 10, 2021

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Residential Tenancy Branch