



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDS-DR, FFL

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

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on October 7, 2021, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenant provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

### 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*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Analysis

In this type of matter, the tenant must prove they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as per section 89 of the *Act*.

Section 89 of the *Act* provides that a Notice of Dispute Resolution Proceeding - Direct Request may be served "*by any other means of service provided for in the regulations.*"

Section 43(2) of the *Residential Tenancy Regulation* provides that documents "*may be given to a person by emailing a copy to an email address **provided as an address for service** by the person.*"

Policy Guideline #12 on Service Provisions provides that "*if there has been a history of communication between parties by email, but a party has not specifically provided an*

*email address for service purposes, it is not advisable to use email as a service method."*

I find that the tenant has sent the Notice of Dispute Resolution Proceeding - Direct Request to the landlord by e-mail. The tenant submitted a copy of several e-mails sent to the landlord; however, I find there is no evidence to demonstrate that the landlord specifically indicated documents could be served by e-mail.

I find the tenant has not demonstrated that the landlord's e-mail address was provided for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord in accordance with section 89 of the *Act* or section 43(2) of the *Regulation*.

For this reason, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find the tenant is not entitled to recover the filing fee paid for this application.

### Conclusion

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

I dismiss the tenant's 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: November 12, 2021

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Residential Tenancy Branch