



# 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 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 copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent to the landlord by registered mail.

### 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

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and one of the tenants on December 5, 2018, indicating a monthly rent of \$1,600.00 and a security deposit of \$800.00, for a tenancy commencing on December 15, 2018
- A copy of a letter from the tenants to the landlord dated September 7, 2021, providing an e-mail address, and requesting the return of the deposit
- 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 on September 7, 2021

- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the forwarding address was sent to the landlord on September 7, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenants vacated the rental unit on June 27, 2021

### Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the tenants 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 tenants 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.

Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

*"Once the package is served, the tenant must complete and submit a Proof of Service Tenant's Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding"*

I note that the tenants submitted a copy of a Canada Post Customer Receipt containing a tracking number to confirm a package was sent to the landlord. However, I find the tenants have not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

Furthermore, I note that the forwarding e-mail letter sent by the tenants on September 7, 2021 does not include a mailing address, only an e-mail address. However, the tenants submitted a copy of the envelope addressed to the landlord containing the tenants' return mailing address.

For this reason, and in accordance with sections 88 and 90 of the *Act*, I find that the forwarding address was served on September 7, 2021 and is considered to have been received by the landlord on September 12, 2021, five days after its registered mailing.

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.

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was September 27, 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 October 2, 2021.

I find that the tenants applied for dispute resolution on September 25, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenants could have applied for dispute resolution was October 3, 2021.

I find that the tenants made their application for dispute resolution too early.

Therefore, the tenants' application for a Monetary Order for the return of double 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 double 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 08, 2021

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Residential Tenancy Branch