



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-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 and the pet damage deposit (the deposits) 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 October 9, 2021.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on October 16, 2021, the tenants sent the landlords the Notice of Dispute Resolution Proceeding - Direct Request by e-mail.

The tenants provided a copy of an outgoing e-mail sent to Landlord A.A. containing the Direct Request documents as attachments to confirm this service. The tenants have also submitted a copy of several e-mails demonstrating that the tenants and Landlord A.A. have a history of sending documents by e-mail.

Based on the written submissions of the tenants and in accordance with sections 43(2) and 44 of the *Residential Tenancy Regulation*, I find that the Direct Request Proceeding documents were served on October 16, 2021 and are deemed to have been received by Landlord A.A. on October 19, 2021, the third day after their e-mailing.

I find the tenants have not submitted a copy of an e-mail sent to Tenant S.R. with the Direct Request documents. In its place, I find the tenants submitted a second copy of the e-mail sent to Landlord A.A.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to Landlord S.R. and for this reason, I will only proceed with the portion of the tenants' application naming Landlord A.A. as a respondent.

### Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage 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 A.A. and the tenants, indicating a monthly rent of \$3,000.00, a security deposit of \$1,397.50, and a pet damage deposit of \$1,397.50, for a tenancy commencing on August 1, 2020
- 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 provided to the landlord on the Condition Inspection Report at 11:05 am on July 31, 2021
- A copy of an e-mail sent from the tenants to Landlord A.A. dated September 10, 2021, providing the forwarding address and requesting the return of the deposits
- A copy of an e-mail reply from Landlord A.A. dated September 13, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on July 31, 2021

### Analysis

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 \$1,397.50 and a pet damage deposit in the amount of \$1,397.50, 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 A.A. to keep all or part of the deposits
- There are no outstanding Monetary Orders against the tenants for this tenancy
- The tenants have not extinguished their right to the deposits 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 July 31, 2021.

The Proof of Service of the Forwarding Address form indicates the forwarding address was provided to Landlord A.A. on the move-out condition inspection report. However, I find the tenants have not submitted a copy of the report containing the forwarding address.

The tenants have submitted a copy of an e-mail sent to Landlord A.A. on September 10, 2021 containing the forwarding address. The tenants have also submitted a reply e-mail from Landlord A.A. dated September 13, 2021.

In accordance with sections 43(1) and 44 of the *Regulation*, I find that the forwarding address was served on September 10, 2021 and is considered to have been received by Landlord A.A. on September 13, 2021, three days after its e-mailing.

I accept the evidence before me that Landlord A.A. has failed to return the deposits to the tenants and has not filed an Application for Dispute Resolution requesting to retain the deposits by September 28, 2021, within the fifteen days granted under section 38(1) of the *Act*.

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

Therefore, I find that the tenant is entitled to a monetary award in the amount of \$5,590.00, double the amount claimed by the tenants for the security deposit and the pet damage deposit.

As the tenants were 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 \$5,690.00 for the return of double the security deposit and the pet damage 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 A.A. must be served with **this Order** as soon as possible. Should Landlord A.A. 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 for a Monetary Order naming Landlord S.R. 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 19, 2021

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Residential Tenancy Branch