



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-DR

### 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 and the pet damage deposit (the deposits).

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenant on December 27, 2021.

The tenant submitted one signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on January 14, 2021, the tenant served the landlords the Notice of Dispute Resolution Proceeding - Direct Request by handing the documents to Landlord K.M. The tenant states that Landlord K.M. threw the envelopes back at the tenant and refused to sign the Proof of Service Tenant's Notice of Direct Request Proceeding form. The tenant also submitted a copy of a photograph showing two envelopes on the floor in front of a door.

### Issue(s) to be Decided

Is the tenant 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*?

### Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of the first and sixth pages of a residential tenancy agreement which was signed by the landlords and the tenant on September 23, 2021
- A copy of a text message from the tenant to one of the landlords providing the forwarding address and requesting the return of the deposit

### Analysis

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

In this type of matter, the tenant must prove that they served the landlords with the Notice of Dispute Resolution Proceeding - Direct Request in a manner that is considered necessary as per sections 71(2) (a) and 89 of the *Act*. Residential Tenancy

Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the landlord, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the tenant deliver the document(s).**

On the Proof of Service Tenant's Notice of Direct Request Proceeding form there is no signature of a witness, or a signature of the person who received the documents, to confirm service of the Notices of Direct Request Proceeding to the landlords.

I note the tenant submitted a photograph showing two envelopes on the floor in front of a door. However, I find this is not adequate evidence of service for a Direct Request, as detailed in Policy Guideline #49.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord, which is a requirement of the Direct Request. However, I find there is a more impactful issue with the tenant's dispute file.

The tenant must prove that they served the landlords with the forwarding address in accordance with section 88 of the *Act*.

Section 88 of the *Act* allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord.

I find the tenant has sent the forwarding address by text message which is not a method of service as indicated above. For this reason, I find that the forwarding address has not been served in accordance with section 88 of the *Act*.

Therefore, I dismiss the tenant's application for the return of the security deposit and the pet damage deposit based on the forwarding address sent by text message, without leave to reapply.

The tenant must reissue the forwarding address and serve it in one of the ways prescribed by section 88 of the *Act*, or according to Residential Tenancy Policy Guideline #49, if the tenant wants to apply through the Direct Request process.

### Conclusion

The tenant's application for the return of the security deposit and the pet damage deposit based on the forwarding address sent by text message, is dismissed, 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: February 01, 2022

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Residential Tenancy Branch