



# Dispute Resolution Services

Page: 1

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 tenant 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 tenant on January 19, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on February 25, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of the Canada Post receipt containing the tracking number to confirm this mailing in fact took place on February 18, 2022. The tenant also submitted a copy of the delivery confirmation to confirm the registered mail was successfully delivered on February 25, 2022.

Based on the written submissions of the tenant and in accordance with section 89 of the *Act*, I find that the Direct Request Proceeding documents were served on February 18, 2022 and have been received by the landlord on February 25, 2022.

### 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*?

### 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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on July 15, 2021 and the tenant on July 16, 2021, indicating a monthly rent of \$800.00 and a security deposit of \$400.00, for a tenancy commencing on July 15, 2021
- A copy of a letter from the tenant to the landlord dated December 26, 2021, providing the forwarding 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 which indicates that the forwarding address was sent to the landlord by fax at 4:36 pm on December 28, 2021
- A copy of a transmission confirmation to confirm the forwarding address was sent to the landlord by fax on December 28, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenancy ended on July 28, 2021

### Analysis

I have reviewed all documentary evidence and in accordance with sections 88 and 90 of the *Act*, I find that the forwarding address was served on December 28, 2021 and is considered to have been received by the landlord on December 31, 2021, three days after its faxing.

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 deposits or filed for dispute resolution was January 15, 2022.

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 tenant may not have received the deposit until January 20, 2022.

I find that the tenant applied for dispute resolution on January 19, 2022, 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 tenant could have applied for dispute resolution was January 22, 2022.

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

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

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the tenant's 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: March 22, 2022

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Residential Tenancy Branch