



# 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 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 February 24, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on February 27, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail.

### 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 and the tenant on July 30, 2020, indicating a monthly rent of \$1,900.00 and a security deposit of \$950.00, for a tenancy commencing on August 1, 2020

- 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 rental agreement was served to the landlord in person on October 17, 2021
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant, an authorized deduction of \$580.00, and indicating the tenant vacated the rental unit on October 31, 2021

### 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 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*.

On the Proof of Service Tenant's Notice of Direct Request Proceeding, the tenant has indicated they sent the Notice of Dispute Resolution Proceeding - Direct Request to the landlord by registered mail.

The tenant submitted two jpeg files claiming to contain the registered mail receipt and tracking number. However, I find that these files cannot be opened and give an error message saying the files may have been corrupted.

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 process.

I also note that section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address **in writing**, the landlord may either repay the deposit or make an application for dispute resolution claiming against the deposit.

The tenant has indicated that the landlord knew what the forwarding address was, as the landlord was present when the tenant signed their new tenancy agreement. However, I find the tenant has not submitted a copy of an official written forwarding address that was given to the landlord.

Without receiving a forwarding address in writing, I find the landlord's obligations under section 38 of the *Act* to return the deposit or file for dispute have not been initiated.

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

The tenant must issue a written 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.

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 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 21, 2022

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Residential Tenancy Branch