



# 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.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on February 17, 2022, the tenants sent the landlords the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenant provided a copy of one Canada Post Customer Receipt containing the tracking number to confirm this mailing.

### 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*?

### 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.

In this type of matter, the tenants must prove they served the landlords with the Notices of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as indicated on the Notice as per section 89 of the *Act* which permits service "by sending a copy by registered mail to the address at which the person resides..."

The tenants must also prove that they served each landlord with the Notice of Dispute Resolution Proceeding - Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #12 on Service Provisions provides the following requirement:

*“Important: all parties named on an application for dispute resolution must receive notice of the proceedings. Where more than one party is named on an application, each party must be served separately.”*

I find that the tenants only submitted one Canada Post registered mail receipt to confirm a package was sent on February 17, 2022. In an ex parte hearing, I find that I am not able to determine whether the tenants sent one registered mail package to Landlord M.D., one package to Landlord A.D., or if the tenants placed both Notices of Dispute Resolution Proceeding - Direct Request in the same envelope with multiple persons named.

I find I am not able to confirm service of the Notices of Dispute Resolution Proceeding - Direct Request to each of the parties individually as required by sections 71 and 89 of the *Act*.

For this reason, the tenants' application for a Monetary Order for the return of 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 the security deposit with leave to reapply.

I dismiss the tenants' 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 11, 2022

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Residential Tenancy Branch