



# 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 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 March 15, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 1, 2022, the tenant sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by e-mail. The tenant provided a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service. The tenant also provided a copy of a substituted service decision showing the tenant was authorized to serve the Notice of Dispute Resolution Proceeding – Direct Request by e-mail.

Based on the written submissions of the tenant and in accordance with section 71(1) of the *Act*, I find that the Direct Request Proceeding documents were served on April 1, 2022 and are deemed to have been received by the landlord on April 4, 2022, the third day after their e-mailing.

### 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, indicating a monthly rent of \$2,795.00 and a security deposit of \$2,795.00, for a tenancy commencing on February 1, 2021
- A copy of a text message from the tenant to the landlord dated January 20, 2022, providing an e-mail address for 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 e-mail address was sent to the landlord by text message at 10:35 am on January 20, 2022
- A copy of an e-mail from the tenant dated March 8, 2022 providing a mailing address and a copy of a reply e-mail from the landlord dated March 15, 2022
- 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 January 31, 2022

### 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.

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.

In order to make an application through the Residential Tenancy Branch, the landlord is required to provide a mailing address for the respondent.

I note the tenant provided an e-mail address to the landlord for the return of the deposit on January 20, 2022. However, I find that an e-mail address does not satisfy the tenant's requirement to provide a forwarding address, as it does not give the landlord the opportunity to file an application in accordance with section 38(1) of the *Act*.

I note that the tenant did provide a valid mailing address by e-mail on March 8, 2022, and the landlord replied to this e-mail on March 15, 2022. In accordance with section

71(2)(b) of the *Act*, I find that the forwarding address was served on March 8, 2022 and was received by the landlord on March 15, 2022, the day the landlord replied to the tenant's e-mail.

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was March 30, 2022.

I find that the tenant applied for dispute resolution on March 15, 2022, before the landlord's fifteen days to comply with the provisions of section 38(1) of the *Act*.

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 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 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: April 29, 2022

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Residential Tenancy Branch