



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNSDB-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 and the pet damage deposit (the deposits) 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 tenants on April 14, 2022.

The tenants submitted two signed Proof of Service Tenant's Notice of Direct Request Proceeding forms which declare that on April 17, 2022, the tenants served each landlord the Notice of Dispute Resolution Proceeding - Direct Request by handing the documents to Landlord R.G. The tenants had a witness and Landlord R.G. sign the Proof of Service Notice of Direct Request Proceeding forms to confirm this service.

### Issue(s) to be Decided

Are the tenants 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*?

Are the tenants 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 tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not one of the respondents and was signed by the tenants on December 17, 2020,

indicating a monthly rent of \$2,695.00, a security deposit of \$1,347.50, and a pet damage deposit of \$1,347.50, for a tenancy commencing on January 15, 2021

- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address)
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form which indicates that a forwarding e-mail address was provided to the landlords by text message at 9:30 am on March 18, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposits paid by the tenants and indicating the tenancy ended on March 15, 2022

### 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.

I have reviewed all documentary evidence and I find the landlord's name on the tenancy agreement does not match either of the landlords named as respondents on the Application for Dispute Resolution. There is also no evidence to demonstrate that the respondents are the owners of the rental property or are otherwise liable for any compensation to be paid to the tenants.

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

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

On the Application for Dispute Resolution and the Proof of Service of the Forwarding Address, the tenants have indicated that they have only provided the landlords an e-mail address and not a mailing address.

The tenants have submitted a copy of a forwarding address form containing a mailing address for the tenants. However, I find this form is not dated and there is no evidence to demonstrate that the form was served the landlords.

I find I am not able to determine whether the landlords were provided a forwarding mailing address for the tenants and had the opportunity to comply with section 38(1) of the *Act* by making an application claiming against the deposits.

For these reasons, the tenants' application for a Monetary Order for the return of the security deposit and the pet damage deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find 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 and the pet damage 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: May 16, 2022

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Residential Tenancy Branch