



# 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 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 April 28, 2022.

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 14, 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 Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on May 14, 2022 and are deemed to have been received by the landlord on May 19, 2022, the fifth day after their registered 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 \$1,300.00 and a security deposit of \$700.00, for a tenancy commencing on March 15, 2021
- A copy of a letter from the tenant to the landlord dated April 4, 2022, 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 registered mail at 3:00 pm on April 4, 2022
- A copy of a Canada Post tracking report containing the tracking number to confirm the forwarding address was sent to the landlord on April 4, 2022 and was delivered to the landlord on April 16, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant, a partial reimbursement of \$250.00, and indicating the tenancy ended on March 15, 2022

### Analysis

The tenant states they sent a copy of the forwarding address on March 18, 2022. However, the tenant has not submitted a copy of this forwarding address. I find I am not able to confirm whether the March 18, 2022 forwarding address was valid and complete. For this reason, I cannot consider the tenant's request based on the forwarding address sent on March 18, 2022.

The tenant has submitted a copy of a forwarding address letter dated April 4, 2022. In accordance with section 88 of the *Act*, I find that the forwarding address was served on April 4, 2022.

I note that section 90 of the *Act* states that a document sent by registered mail is deemed received five days after it was mailed. However, Policy Guideline #12 on Service Provisions states that the deemed receipt provisions are used in the absence of evidence of the date the documents were actually received.

In this case, the tenant submitted a copy of a tracking report that indicates that the forwarding address was successfully delivered to the landlord on April 16, 2022. I find the landlord actually received the forwarding address on April 16, 2022.

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 balance of the deposit or filed for dispute resolution was May 1, 2022.

I find that the tenant applied for dispute resolution on April 28, 2022, before the landlord's last day to comply with the provisions of section 38(1) of the *Act*<sup>1</sup>.

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: June 13, 2022

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Residential Tenancy Branch