



# 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.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the tenants on September 20, 2022.

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on September 21, 2022, the tenants sent the landlord the Notice of Dispute Resolution Proceeding - Direct Request by registered mail. The tenants provided a copy of the Canada Post receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the tenants and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on September 21, 2022 and are deemed to have been received by the landlord on September 26, 2022, the fifth day after their registered 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*?

### 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 was signed by the landlord and the tenants, indicating a monthly rent of \$2,300.00 and a security deposit of \$1,150.00, for a tenancy commencing on April 1, 2022
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the forwarding address) dated September 9, 2022
- 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 e-mail at 1:59 pm on September 9, 2022
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenants and indicating the tenants vacated the rental property on July 31, 2022

### Analysis

In this type of matter, the tenants must prove that they served the landlord with the forwarding address in accordance with section 88 of the *Act*.

Policy Guideline #49 on Tenant's Direct Request indicates that service of the forwarding address by e-mail may be proven by providing:

- A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email and
- The RTB-51 - Address for Service or other document that sets out the party's email address for service

The tenants have indicated they sent the forwarding address to the landlord by e-mail. However, I find the tenants have not submitted a copy of the outgoing e-mail showing the forwarding address included as an attachment.

I also note the tenancy agreement submitted by the tenants contains an e-mail address as part of the landlord's contact information. However, there is no indication that the landlord specifically agreed to receive documents by e-mail, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the forwarding address to the landlord and 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 the tenants are not entitled to recover the 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: October 21, 2022

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Residential Tenancy Branch