

## **DECISION**

### **Introduction**

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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 the tenant's Application for Dispute Resolution (Application) for:

- a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit pursuant to sections 38 and 67 of the Act (\$800.00)
- authorization to recover the filing fee for this application from the landlord pursuant to section 72 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that the landlord was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in person.

### **Issue(s) to be decided**

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Is the tenant entitled to a Monetary Order for the return of all or a portion of their security and/or pet damage deposit? (\$800.00)

Is the tenant entitled to recover the filing fee for this application from the landlord? (\$100.00)

### **Analysis**

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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.

In this type of matter, the tenant must prove that they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request in a manner that is considered necessary as per sections 71(2)(a) and 89 of the Act. Policy Guideline #49 contains the details about the key elements that need to be considered when making an application for Direct Request.

Proof of service of the Notice of Direct Request Proceeding may take the form of:

- registered mail receipt and printed tracking report;
- **a receipt signed by the landlord, stating they took hand delivery of the document(s); or**
- **a witness statement that they saw the tenant deliver the document(s).**

On the Proof of Service Tenant's Notice of Direct Request Proceeding form there is no signature of a witness, or of the person who received the documents, to confirm service of the Proceeding Package to the landlord.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord, which is a requirement of the Direct Request proceeding.

For this reason, the tenant's application for a Monetary Order for the return of the security deposit and/or the pet damage 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**

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The tenant's application for a Monetary Order for the return of all or a portion of their security deposit and/or pet damage deposit, pursuant to sections 38 and 67 of the Act, is dismissed with leave to reapply.

The tenant's application for authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the Act, is dismissed 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: November 16, 2022

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Residential Tenancy Branch