

## **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 tenants' Application for Dispute Resolution (Application) for:

- a Monetary Order for the return of all or a portion of their security deposit pursuant to sections 38 and 67 of the Act (\$2,100.00)
- 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 tenants submitted a copy of two Canada Post tracking reports containing tracking numbers to confirm two packages were sent by registered mail.

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

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Are the tenants entitled to a Monetary Order for the return of all or a portion of their security deposit? (\$2,100.00)

Are the tenants 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 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.

In this type of matter, the tenants must prove they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the

application as per section 89 of the *Act*. Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

*"Once the package is served, the tenant must complete and submit a Proof of Service Tenant's Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding"*

I note that the tenants submitted a copy of two Canada Post tracking reports confirm packages were sent by registered mail. However, I find the tenants have not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding forms which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

I find the tenants have not submitted the documents required for a Direct Request 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 that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

## **Conclusion**

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

The tenants' 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 30, 2022

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Residential Tenancy Branch