



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNSDS-DR, FFT**

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution by direct request, made on January 23, 2022 (the "Application") and adjourned to a participatory hearing. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlords return all or part of the security deposit and/or pet damage deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on November 1, 2022 as a teleconference hearing. Only the Tenant attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Landlord. The conference call line remained open and was monitored for 23 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that Tenant and I were the only persons who had called into this teleconference.

The Tenant stated that they served the Notice of hearing and documentary evidence to the Landlord by Registered Mail on March 17, 2022. The Tenant provided the Registered Mail receipt in support. Based on the oral and written submissions of the Tenant, and in accordance with section 89 and 90, I find the Landlord is deemed to have been served with the above-mentioned documents five days later, on March 22, 2022.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord return all or part of the security deposit, pursuant to section 38 of the *Act*?
2. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to section 72 of the *Act*?

### Background and Evidence

The Tenant stated that the tenancy began on March 1, 2021. During the tenancy, the Tenant was required to pay rent in the amount of \$1,400.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 to the Landlord. The tenancy ended on October 31, 2021.

The Tenant stated that they provided their forwarding address to the Landlord by email on November 16, 2021. The Tenant stated that the Landlord did not respond to the Tenant's email, nor did the Landlord approve email as an approved form of service for tenancy related documents.

### Analysis

Based on the documentary evidence before me for consideration and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit. These mandatory provisions are intended to discourage landlords from arbitrarily retaining deposits.

Section 88 of the *Act* allows for documents, other than those referred to in section 89, that are required or permitted under this *Act* to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

In this case, the Tenant stated that they provided the Landlord with their forwarding address by email, on November 16, 2021. I find there is no evidence to confirm that the Landlord received the Tenants' forwarding address. I further find that the email message does not meet the requirements of Section 88 of the *Act*.

In light of the above, I find that the Tenant did not adequately serve the Landlord with their forwarding address in writing in accordance with Section 38(1) of the *Act*. Therefore, I dismiss the Tenants' Application with leave to reapply. The Tenant is required to provide the Landlord with their forwarding address in writing. It is suggested that this be done by Canada Post registered mail.

Section 39 of the *Act* establishes that it is the Tenants obligation to provide a forwarding address for return of the Deposits within a year of the end of the tenancy. If that does not occur, the Landlord may keep the Deposit and the Tenants' right to the Deposit is extinguished.

As the Tenant was not successful with their Application, I decline to award the return of the filing fee.

Conclusion

The Tenant has provided insufficient evidence to demonstrate that they served their forwarding address to the Landlord in writing or served in accordance with Section 88 of the Act. The Tenant's Application for the return of their security is dismissed with 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 01, 2022

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Residential Tenancy Branch