

## **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 pursuant to sections 38 and 67 of the Act (\$1,100.00)
- 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 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) by e-mail and by registered mail. The tenant submitted a copy of a Canada Post receipt containing a tracking number to confirm this service.

### **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 deposit? (\$1,100.00)

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

### **Analysis**

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In this type of matter, the tenant must prove they served the landlord with the Notice of Dispute Resolution Proceeding - Direct Request and all documents in support of the application as indicated on the Notice as per the *Residential Tenancy Act* (the Act) and the *Residential Tenancy Regulation* (the Regulation)

The tenant has indicated they sent the Proceeding Package to the landlord by e-mail. Policy Guideline #49 on Tenant's Direct Request provides that service of the Notice of Dispute Resolution Proceeding – Direct Request 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

I find the tenant has not submitted a copy of the outgoing e-mail showing the Proceeding Package documents were included as attachments. I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding – Direct Request to the landlord by e-mail.

The tenant has also indicated they sent the Proceeding Package to the landlord by registered mail. The definition of registered mail is set out in section 1 of the Act as “*any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.*”

Policy Guideline #12 on Service Provisions goes on to clarify that this “*includes Express post, if the signature option is used.*”

I find that the tracking number provided by the tenant with the Proof of Service Tenant's Notice of Direct Request Proceeding is for a package sent by Canada Post's Express post mailing, which may or may not require a signature from the individual to confirm delivery to the person named as the respondent.

In this case, Canada Post's online tracking system shows that a signature was not required for the delivery of this Express post mailing and, as such, it does not meet the definition of registered mail as defined under the Act.

I find that the tenant has not served the landlord with the Proceeding Package by registered mail, in accordance with sections 1 and 89 of the Act.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding to the landlord and for this reason, I dismiss the tenant's application for a Monetary Order for the return of the security deposit 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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I dismiss the tenant's application for a Monetary Order for the return of the security deposit, pursuant to section 67 of the Act, with leave to reapply.

I dismiss the tenant's application to recover the filing fee paid for this application, pursuant to section 72 of the Act, 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 24, 2022

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Residential Tenancy Branch