

## **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 (\$925.00)
- 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.

### **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? (\$925.00)

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

### **Background and Evidence**

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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 tenant submitted the following evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,850.00, and a security deposit of \$925.00, for a tenancy commencing on April 17, 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 October 26, 2022;
- A copy of a Proof of Service Tenant's Forwarding Address for Return of security deposit and/or pet damage deposit form which indicates that the parties agreed the deposit would be paid by e-transfer;
- A copy of a Tenant's Direct Request Worksheet showing the amount of the deposit paid by the tenant and indicating the tenancy ended on September 15, 2022.

## 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 per section 89 of the Act.

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

The tenant has indicated they sent the Notice of Dispute Resolution Proceeding - Direct Request to the landlord by e-mail. However, I find the tenant has not submitted a copy of the outgoing e-mail showing the Direct Request documents were included as attachments.

There is also no evidence to demonstrate that the landlord provided their e-mail address specifically for service of documents, as required by section 43(2) of the *Residential Tenancy Regulation*.

I find I am not able to confirm service of the Notice of Dispute Resolution Proceeding - Direct Request to the landlord. However, I find there is a more impactful issue with the tenant's application.

Section 38(1) of the Act states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposit(s) or make an application for dispute resolution claiming against the deposit(s).

In order to submit an application through the Residential Tenancy Branch, the landlord is required to provide a mailing address for the respondent tenant.

The tenant states they provided the landlord an e-mail address for the return of the deposit; however, the tenant has not provided a mailing address.

I find I am not able to determine whether the landlord had the opportunity to comply with section 38(1) of the Act by filing an application claiming against the deposit.

For this reason, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

The tenant must issue a valid and complete forwarding mailing address to the landlord if the tenant wants to reapply for the return of the deposit.

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 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: December 5, 2022

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Residential Tenancy Branch