



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSDS-DR

### Introduction

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 an Application for Dispute Resolution by the tenant for a Monetary Order for the return of double the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on January 26, 2021, the tenant personally served the landlord the Notice of Direct Request Proceeding. The tenant had the landlord and a witness sign the Proof of Service Tenant's Notice of Direct Request Proceeding to confirm personal service. Based on the written submissions of the tenant and in accordance with section 89 of the *Act*, I find that the landlord has been duly served with the Direct Request Proceeding documents on January 26, 2021.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

### Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on December 16, 2019, indicating a monthly rent of \$1,800.00 and a security deposit of \$900.00, for a tenancy commencing on January 1, 2020;
- A copy of a letter from the tenant to the landlord providing the forwarding address and requesting the return of the deposit;
- A copy of a witnessed Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was personally served to the landlord at 4:30 pm on January 8, 2021; and

- A copy of a Tenant's Direct Request Worksheet showing the amount of deposit paid by the tenant and indicating the tenancy ended on December 31, 2020.

### Analysis

I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the landlord was duly served with the forwarding address on January 8, 2021.

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 or make an application for dispute resolution claiming against the deposit.

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was January 23, 2021.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent the deposit by mail on their last day, the tenant may not have received the deposit until January 28, 2021.

I find that the tenant applied for dispute resolution on January 25, 2021, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was January 29, 2021.

I find that the tenant made their application for dispute resolution too early.

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

### Conclusion

I dismiss the tenant's application for a Monetary Order for the return of double the security deposit 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: February 17, 2021

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Residential Tenancy Branch