

49 Tenant's Direct Request – Deposits

May 2022

This policy guideline is intended to help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This policy guideline may be revised and new guidelines issued from time to time.

This policy guideline addresses the circumstances under which a tenant can make a direct request application for return of a security deposit and/or pet damage deposit.

When a tenancy ends, a tenant must provide the landlord with a forwarding address so the landlord can return the security deposit and pet damage deposit. From the date the landlord receives the forwarding address in writing or the tenancy ends (whichever comes later), the landlord has 15 days to return the deposit or apply to the Residential Tenancy Branch to keep it. If the landlord does neither, then a tenant may apply for return of the deposits by filing an application for dispute resolution. However, tenants may be able to go through a process that is quicker than waiting for a hearing, called a direct request. Tenants can submit this application 20 days after the tenancy has ended and the landlord has your forwarding address (15 days to return the deposit(s) plus five days to allow for mail to be received). The tenant must have certain documents and must complete forms provided by the Branch, in order to qualify for this process.

If a tenant does not have certain forms as described below, then the tenant must apply in the usual course, and attend a hearing.

LEGISLATIVE FRAMEWORK

Section 38(1) of the *Residential Tenancy Act* says that within 15 days of the date a tenancy ends and the date the landlord receives the tenant's forwarding address in writing (whichever comes later) a landlord must:

1. Repay a security deposit and/or pet damage deposit to the tenant; or
2. Apply to the Residential Tenancy Branch to keep it.

The Act deems that if a landlord does not do either, they cannot claim against the deposit, and must pay the tenant double the amount of the deposit, unless:

1. The Branch previously ordered the tenant to pay money to the landlord, and the tenant has not paid it;
2. The tenant agreed in writing that the landlord could keep the deposit to pay a liability or obligation; or
3. The landlord offered the tenant at least two opportunities to inspect the unit at the beginning or end of the tenancy, and the tenant did not participate.

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Section 38.1 of the Act allows a tenant to make an *ex parte* application for the return of double the amount of a deposit if the landlord has not returned or claimed against it as required under section 38(1), and:

1. there is no order allowing the landlord to keep the amount; and,
2. the tenant has not agreed in writing that the landlord can keep the amount.

In an *ex parte* hearing, the Branch makes a decision based on the written submissions of the applicant. This is called a direct request.

MAKING A DIRECT REQUEST FOR RETURN OF A DEPOSIT

To make a direct request for return of a security deposit and/or pet damage deposit, an applicant must provide certain documents and information that prove the landlord failed to comply with section 38(1). When making a request, an applicant must provide:

1. A copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required;
2. If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;
3. A copy of the forwarding address given to the landlord (Form RTB-47 is recommended, but not required) *or* a copy of the condition inspection report with the forwarding address provided;
4. A completed *Proof of Service of Forwarding Address* (Form RTB-41);
5. A *Tenant's Direct Request Worksheet* (Form RTB-40); and
6. The date the tenancy ended.

Proving Service of the Forwarding Address

The forwarding address can be given in the form of a letter or on the condition inspection report and an applicant must be able to prove they served the landlord with the forwarding address. If the tenant provided their forwarding address on the move-out condition inspection report, the director may accept the landlord's signature on the condition inspection report as confirmation of service. The Branch also has a suggested letter form a tenant may use to provide their forwarding address to the landlord (Form RTB-47).

The tenant must prove they served their forwarding address to the landlord. An applicant is required to complete the *Proof of Service of Forwarding Address* (Form RTB-41) for this purpose.

An applicant may use any of the methods of service allowed under section 88 of the Act to serve their forwarding address (see Guideline 12 – Service Provisions). **However,**

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using the preferred methods of service in the table on page 4 will lessen the likelihood of a direct request being adjourned to a participatory hearing. This is because under the preferred methods, service can be substantiated.

Section 90 of the Act sets out when documents are deemed served depending on the method of service. For example, a document sent by registered mail is deemed served 5 days after it is mailed.

NOTICE OF DISPUTE RESOLUTION PROCEEDING

The Branch will provide the applicant with a *Notice of Dispute Resolution Proceeding* and instruct the applicant to prepare and serve a package of documents on the landlord.

The package must contain:

- 1) The *Notice of Dispute Resolution Proceeding* which includes the Application for Dispute Resolution;
- 2) A copy of the signed tenancy agreement;
- 3) The forwarding address letter, the RTB-47 form, *or* the condition inspection report, if this was used to provide the forwarding address to the landlord;
- 4) The *Proof of Service of Forwarding Address* (Form RTB-41);
- 5) The *Tenant's Direct Request Worksheet* (Form RTB-40); and
- 6) Any other evidence submitted by the applicant.

This package must be served within three days of the Branch making the Notice of Dispute Resolution Proceeding document available.

The package can only be served:

- by registered mail to the address at which the person carries on business as a landlord;
- by leaving a copy with the landlord or an agent of the landlord;

Serving of the Notice of Dispute Resolution Proceeding package

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*.

Once the package is deemed served, the Branch can adjudicate the dispute.

OUTCOMES

The possible outcomes in a Tenant's Direct Request for Deposits are:

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1. Granted with a monetary order issued for double the amount of the outstanding security deposit and/or pet damage deposit.
2. Adjourned to be reconvened as a participatory hearing.
3. Dismissed, with or without leave to reapply.

Monetary Order

The director may issue a monetary order, if the director is satisfied that:

1. The tenant served the landlord with their forwarding address in writing and 15 days have elapsed since the landlord was deemed served;
2. The tenancy ended, and 15 days have elapsed since the end date;
3. There is no outstanding order for the tenant to pay money to the landlord;
4. There is no written agreement that the landlord could keep the deposit; and
5. The tenant did not forfeit their right to claim against the deposit.

Adjournment

The director may adjourn the matter to a participatory hearing, if the director has questions about any of the materials submitted by the applicant, or if the director needs to make findings of credibility.

The director may also adjourn the matter if the landlord has submitted an application for dispute resolution to keep a deposit.

Dismissed

The director may dismiss, with or without leave to reapply, all or portions of the application if the tenant:

- has not provided all the required documents with the application;
- has not provided proof of service of the required documents;
- has applied for a monetary claim other than for the return of their security deposit or pet damage deposit; or
- the evidence indicates the tenant would not be successful in a participatory hearing.

TABLE: PREFERRED METHODS OF SERVICE

Method of service	Proof of Service
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Registered mail	Canada Post Registered Mail receipt showing the date and time of purchase and printed tracking report
Leaving a copy with the landlord in person	<p>Hand-delivery receipt completed and signed by the landlord who received the document(s) stating what document(s) they received by hand, the date and time of service and the name of the person who served the document(s)</p> <p>or</p> <p>Signed witness statement confirming the name of the person who served the document(s) by hand-delivering them to the landlord, what document(s) they served, the date and time of service and the name of the person the documents were served to</p>
Leaving a copy in the landlord's mailbox or mail slot	Signed witness statement confirming the name of the person who served the document(s) by leaving them in the mailbox or mail slot, what document(s) they served, the date and time of service and the name of the person the documents were addressed to
Attaching a copy to the door or other conspicuous place at which the landlord resides or carries on business as a landlord	Signed witness statement confirming the name of the person who served the document(s) by attaching a copy to the door or other conspicuous place at which the landlord resides or carries on business as a landlord, what document(s) they served, the date and time of service and the name of the person or business the documents were addressed to
Faxing a copy to the landlord's fax number provided for service of documents	<p>A copy of the fax transmission report,</p> <p>and</p> <p>A separate confirmation that the fax number is the landlord's current fax number, or the fax number given for service, indicating that they can receive documents at the fax number</p>
Emailing a copy to an email address provided for service by the person being served	<p>A copy of the outgoing email showing the email address used, the date the email was sent, and any attachments included in the email,</p> <p>and</p> <p>RTB 51 – Address for Service or other document that sets out the party's email address for service</p>

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A. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	New	New guideline in effect	2020-01-18
Table	am	Amended to include email to an address provided by the tenant for service as a method of service	2021-09-17
All	am	Revised for clarity	2022-05-10

Change notations

am = text amended or changed

del = text deleted

new = new section added