



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MNSDS-DR, FFT

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 seeking the return of his security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on March 21, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenant, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have received the Direct Request Proceeding documents on March 26, 2020, the fifth day after their registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of his security deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Background and Evidence

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.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking a return of double the amount of the unreturned portion of his security deposit in the amount of \$522.00.

The tenant provided a copy of a letter addressed to the landlord, dated December 28, 2019, in which he provided his forwarding address and expressed that he sought the return of his security deposit. The tenant asserted that the letter was served to the landlord by way of leaving a copy in the mailbox or mail slot at the landlord's residence on December 28, 2020.

Additionally, the tenant provided a copy of a RTB-41 form titled "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service form) which depicts that the tenant provided his forwarding address to the landlord by way of leaving a copy in the mailbox or mail slot at the landlord's residence on December 28, 2020. The Proof of Service form does not include the name and signature of a witness.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on tenant in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the tenant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the *Act* and Policy Guideline #49 – Tenant's Direct Request. There can be no omissions or deficiencies with items being left open to interpretation or inference.

I have reviewed all documentary evidence provided by the tenant. Residential Tenancy Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request. In a Direct Request application, the tenant must prove that they served the landlord with their forwarding address in a manner that is considered necessary as per Sections 71(2) (a) and 88 of the *Act*.

Policy Guideline 49 directs that, as part of the application, a tenant must include proof that the tenant served the landlord with the forwarding address. Policy Guideline 49 provides that the applicant must include a completed "Proof of Service of Forwarding Address" (form RTB-41) to demonstrate that the forwarding address was served to the landlord in a manner permitted under the *Act*.

Policy Guideline 49 also provides that if a tenant serves their forwarding address to the landlord by way of leaving a copy in the landlord's mailbox or mail slot, they must provide proof of service, such as a 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.

On the first page of the Proof of Service form, the tenant has checked a box indicating that the forwarding address was served by leaving a copy in the mailbox or mail slot at the landlord's residence. If service of the forwarding address was completed in this manner, the tenant must provide proof, such as a witness statement, including the name and signature of a witness, to confirm service of the forwarding address in this manner.

On the second page of the Proof of Service form, under the section titled "Witness Statement", the form does not include the name and signature of a witness to confirm that the service was carried out as attested by the tenant, in the presence of a witness, as that field of the form was left blank.

I find that the tenant is required to provide a completed Proof of Service form which includes the name and signature of a witness to confirm that the forwarding address was served in accordance with the *Act*.

I find that the tenant has not demonstrated that service of the forwarding address was witnessed and completed in accordance with the *Act*, nor has the tenant provided the name and signature of a witness on the Proof of Service form, as is required within the Direct Request process.

The Proof of Service form provided by the tenant does not satisfy the requirements under the Direct Request Process to prove that the landlord was served with the forwarding address in accordance with the *Act*, and as required under the provisions of the Direct Request process outlined in Policy Guideline #49. Based on the evidentiary

material provided by the tenant, I find that I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request process.

I further find that there is no evidence before me that establishes that the tenant was given leave to serve the forwarding address in an alternative fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with section 88(i) of the *Act*.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Therefore, I find that a participatory hearing will provide the proper venue to make a determination on these issues and to hear the tenant's request for the return of his security deposit.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an Arbitrator appointed under the *Act* is required in order to determine the details of the tenant's application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the landlord within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. For more information see our website at: gov.bc.ca/landlordtenant.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020
Elsewhere in BC: 1-800-665-8779

This interim 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: March 30, 2020

Residential Tenancy Branch