



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 tenants for a Monetary Order seeking the return of her security deposit.

The tenant submitted two signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” forms which declare that on March 28, 2020 the tenant served each of the above-named landlords with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenant provided two copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. 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 tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the landlords are deemed to have received the Direct Request Proceeding documents on April 02, 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 her 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 landlords 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 her security deposit in the amount of \$1,325.00.

The tenant's evidentiary package consisted of only two documents. The tenant provided a copy of the tenancy agreement, and a copy of an email, dated March 03, 2020, addressed to the landlord "KN", in which the tenant provides her forwarding address and requests the return of her security deposit.

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. Policy Guideline # 49

states that when making an Application for Dispute Resolution by Direct Request to seek return of a security deposit, the tenant must provide the following documents:

- *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;*
- *If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- *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;*
- *A completed Proof of Service of Forwarding Address (Form RTB-41);*
- *A Tenant's Direct Request Worksheet (Form RTB-40); and*
- *The date the tenancy ended.*

I find that the tenant's application does not contain all of the required documents cited above and is therefore incomplete. The tenant has not provided a copy a completed Proof of Service of Forwarding Address form (Form RTB-41), or a Tenant's Direct Request Worksheet (Form RTB-40).

Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

On the Application for Dispute Resolution by Direct Request, the tenant provides that she provided her forwarding address to the landlord by way of email. I find that by serving the forwarding address by way of email, the tenant has not served the forwarding address in a manner consistent with the service provisions for documents as provided under section 88 of the *Act*, as email is not an approved method of service under section 88 of the *Act*.

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*.

Based on the foregoing, I find that the tenant has not demonstrated that the forwarding address was properly served in accordance with section 88 the *Act*.

Within the narrow scope of the Direct Request process, I cannot determine whether the landlord KN received the tenant's March 03, 2020 email in which she provided her forwarding address. Although email is not an approved method of service under section 88 of the *Act*, section 71(2)(b) of the *Act* does permit an Arbitrator to determine that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies. However, in the absence of more evidentiary material or sworn testimony from the parties, I cannot make such a determination within the limited scope of the Direct Request process.

I find that a participatory hearing will provide the proper venue to make a determination on whether the landlord received the tenant's forwarding address sent via email and to hear the tenant's request for an a monetary order seeking the return of her 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 landlords 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: April 14, 2020

Residential Tenancy Branch