



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 for the return of double the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 1, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenants provided a copy of the outgoing e-mail containing the attached supporting documents to confirm this service.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenants submitted a copy of four e-mails exchanged between February 8, 2020 and February 20, 2020, showing that the landlord and tenants used e-mail to communicate about tenancy issues.

Based on the written submissions of the tenants and in accordance with the Director's Order, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on April 4, 2020, the third day after their e-mailing.

Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord on January 14, 2019 and the tenants on January 12, 2019, indicating a monthly rent of \$2,250.00 and a security deposit of \$1,125.00, for a tenancy commencing on February 1, 2019;
- A copy of a Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit (the Forwarding Address) dated March 23, 2020;
- A copy of a 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 originally given to the landlord in person on January 31, 2020 and subsequently sent to the landlord by registered mail on March 23, 2020;
- A copy of a Canada Post Customer Receipt containing the Tracking Number to confirm the forwarding address was sent to the landlord on March 23, 2020; and
- A copy of a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet). showing the amount of deposit paid by the tenants and stating that the tenancy ended on January 31, 2020.

Analysis

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 that such evidentiary material 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 tenants have indicated that they verbally gave the landlord their forwarding address on January 31, 2020 and that the landlord wrote this address down on a piece of paper. In a Direct Request Proceeding, the tenants are required to provide a copy of the written forwarding address given to the landlord.

For this reason, I cannot consider the tenants' application based on the verbal January forwarding address.

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

The definition of days in the Residential Tenancy Branch Rules of Procedure states that: "If the time for doing an act in a business office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open".

In accordance with section 88 and 90 of the *Act*, I find that the landlord is deemed to have been served the March forwarding address on March 28, 2020, five days after its registered mailing.

I find that the fifteenth day for the landlord to either return the deposits or file for dispute resolution is April 12, 2020. The Residential Tenancy Branch is closed on Saturdays, Sundays, and holidays meaning that the latest day on which the landlord can make an application for dispute resolution is on Tuesday, April 14, 2020.

I find that the tenants applied for dispute resolution on March 29, 2020, before the last day the landlord can make an application for dispute resolution, and that the earliest date the tenants can apply for dispute resolution will be April 15, 2020. The tenants made their application for dispute resolution too early.

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

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of double the security deposit with leave to reapply.

I dismiss the tenants' application to recover the filing fee paid for this application 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: April 09, 2020

Residential Tenancy Branch