



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

Preliminary Matters

On April 3, 2020 the tenant submitted an Application for Substituted Service requesting to serve the Notice of Direct Request Proceeding and supporting documents to the landlord by e-mail.

I note that the Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be served in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received if:

- The person acknowledges having received the e-mail;
- The person replies to the e-mail; or
- The sender and recipient e-mail addresses have been routinely used for tenancy matters.

As there is already a Director's Order in place allowing service of documents by e-mail, I find it is not necessary to consider the tenant's Application for Substituted Service.

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 the security deposit (the deposit).

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*?

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.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding with all the required inclusions. Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

"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"

I find the tenant has not provided a copy of the Proof of Service Tenant's Notice of Direct Request Proceeding form which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

For this reason, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply either through the Direct Request process or a participatory hearing.

Reapplying through Direct Request

Section 59 of the *Act* establishes that an Application for Dispute Resolution must "include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Policy Guideline #49 on Tenant's Direct Request provides the following requirements:

When making a request, an applicant must provide:

- A copy of the signed tenancy agreement;
- A receipt for the pet damage deposit (if accepted after the tenancy began);
- A copy of the forwarding address given to the landlord;
- **A completed Proof of Service of Forwarding Address form;**
- **A Tenant's Direct Request Worksheet;** and
- The date the tenancy ended.

I find that the tenant has not submitted a Proof of Service of Forwarding Address form or a Tenant's Direct Request Worksheet.

The tenant is at liberty to reapply through the Direct Request Process if they can satisfy the requirements as detailed in Policy Guideline #49.

Conclusion

I dismiss the tenants' application for a Monetary Order for the return of 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: April 09, 2020

Residential Tenancy Branch