



Dispute Resolution Services

Page: 1

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 tenant for a Monetary Order for the return of the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on April 4, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by registered mail. The tenant provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. 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 been served with the Direct Request Proceeding documents on April 9, 2020, the fifth day after their registered mailing.

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*?

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

Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 16, 2019, indicating a monthly rent of \$1,650.00 and a security deposit of \$825.00, for a tenancy commencing on September 1, 2019;

- A copy of a text message from the tenant to the landlord dated March 9, 2020, providing the forwarding address and requesting the return of the deposit;
- A copy of a written note from the tenant providing the forwarding address;
- A copy of a witnessed 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 written forwarding address was placed in the landlord's mailbox or mail slot at 12:00 pm on March 10, 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) stating that the tenancy ended on February 10, 2020 and that the tenant vacated the rental unit on March 10, 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.

In this type of matter, the tenant must prove they served the landlord the forwarding address in accordance with section 88 of the *Act*, which allows for service by either sending the forwarding address to the landlord by mail, by leaving a copy with the landlord or their agent, by leaving a copy in the landlord's mailbox or mail slot, attaching a copy to the landlord's door or by leaving a copy with an adult who apparently resides with the landlord

I note that the tenant has sent their forwarding address to the landlord on March 9, 2020 by text message, which is not a method of service recognized by the *Act*. For this reason, I cannot consider the tenant's application based on the forwarding address sent by text message.

The tenant has also indicated they gave a written forwarding address to the landlord on March 10, 2020.

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the Forwarding Address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the written forwarding address on March 13, 2020, three days after it was placed in the mailbox or mail slot.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was March 28, 2020.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord sent the deposit by mail on their last day, the tenant may not have received the deposit until April 2, 2020.

I find that the tenant applied for dispute resolution on April 1, 2020, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was April 3, 2020.

I find that the tenant made their application for dispute resolution based on the written forwarding address too early.

Finally, 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 Direct Requests requires an Application for Dispute Resolution to include a completed Tenant's Direct Request Worksheet.

I find that the tenant has not filled out section 2 of the Direct Request Worksheet, detailing the amount of deposit paid and indicating whether the landlord made any partial reimbursements and whether the tenant authorized any deductions from the deposit.

I further find that I am not able to consider the tenant's Application for Dispute Resolution without the complete details of the Direct Request Worksheet which forms a part of the Application.

For the reasons listed above, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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

I dismiss the tenant's 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 14, 2020

Residential Tenancy Branch