



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 tenant for a Monetary Order for the return of 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 7, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail.

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*?

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 tenants must prove they served the landlord with the Notice of Direct Request proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

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.

On the Proof of Service of the Notice of Direct Request Proceeding, the tenants have indicated they sent the Notice of Direct Request Proceeding to the landlord by e-mail. However, I find that the tenants have not provided a copy of the outgoing e-mail to confirm the documents were sent.

The tenants have also not submitted a copy of an e-mail reply from the landlord, an acknowledgement from the landlord that they received the e-mail, or a copy of previous e-mails exchanged between the landlord and the tenants to demonstrate that e-mail was regularly used to as a method of communication for tenancy issues.

For these reasons, I find I am not able to determine whether the tenants' e-mail service can be considered received in accordance with the Director's Order.

As I am not able to confirm service of the Notice of Direct Request Proceeding to the landlord, which is a requirement of the Direct Request process, the tenants' application for a Monetary Order for the return of 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 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 16, 2020

Residential Tenancy Branch