



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

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 double 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 16, 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 will be deemed to have been served with the Direct Request Proceeding documents on April 21, 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*?

Background and Evidence

The tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,400.00 and a security deposit of \$700.00, for a tenancy commencing on November 15, 2018;
- A copy of a notice to vacate which was signed by the tenant on January 31, 2020, indicating the tenancy would end as of February 29, 2020;

- A copy of a letter from the tenant to the landlord dated March 17, 2020, providing the forwarding address and requesting the return of the deposit;
- 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 forwarding address was posted to the landlord's door at 7:16 pm on March 17, 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 tenant.

Analysis

I have reviewed all documentary evidence and I find that the tenant paid a security deposit in the amount of \$700.00, as per the tenancy agreement.

I find that the tenancy ended on February 29, 2020, the date indicated on the tenant's notice to vacate.

In accordance with sections 88 and 90 of the *Act*, I find that the landlord was deemed served with the forwarding address on March 20, 2020, three days after its posting.

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.

I find that the fifteenth day for the landlord to have either returned the deposits or filed for dispute resolution was April 4, 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 9, 2020. I find that the earliest date the tenant could have applied for dispute resolution was April 10, 2020.

As the tenant applied for dispute resolution on April 9, 2020, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, I find that the tenant made their application for dispute resolution too early.

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

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of double 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 17, 2020

Residential Tenancy Branch