



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 tenants 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 17, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenants submitted a copy of an outgoing e-mail containing attachments of the supporting documents to confirm this service.

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 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 outgoing e-mail submitted by the tenants does not provide the sender's e-mail address or the date the e-mail was 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 copies of previous e-mails exchanged between the tenants and the landlord to demonstrate the e-mail accounts were regularly used 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 20, 2020