



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDB-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 tenants for a Monetary Order seeking the return of their security deposit and pet damage deposit (collectively, the “deposits”).

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on April 20, 2020 the tenants served the landlord with the Notice of Direct Request Proceeding by way of email.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*
- the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*

- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the tenants, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the the Direct Request Proceeding documents on April 23, 2020, three days after they were sent to the landlord by the tenants by way of email.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the Act?

Are the tenants entitled to a monetary award for the return of all or a portion of their pet damage deposit pursuant to section 38 of the Act?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

On the tenants' Application for Dispute Resolution by Direct Request (the "application"), the tenants have requested a Monetary Order seeking a return of their security deposit in the amount of \$947.50 and the return of their pet damage deposit in the amount of \$350.00.

The tenants' evidentiary package consisted of only two documents. The tenants provided an incomplete copy of the residential tenancy agreement, as only the first page of the agreement was provided despite a notation on the top of the first page which depicts that the tenancy agreement consists of four pages. The single page of the tenancy agreement does not contain the signatures of any parties to the agreement.

The tenants also provided a copy of an email dated September 28, 2019, in which the tenant "KH" addressed a message to an entity bearing the same first name as the corporate entity identified as the landlord on the tenants' Application for Dispute Resolution by Direct Request. The email message states only that the tenants will be moving out of the rental unit on October 31, 2019, but does not include the tenants' forwarding address.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on tenant in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the Act and Policy Guidelines. 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 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.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the Act and Policy Guideline #49 – Tenant's Direct Request. There can be no omissions or deficiencies with items being left open to interpretation or inference.

I have reviewed all documentary evidence provided by the tenant. Residential Tenancy Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 49 states that when making an Application for Dispute Resolution by Direct Request to seek return of a security deposit, the tenant must provide the following documents:

- *A copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required;*
- *If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- *A copy of the forwarding address given to the landlord (Form RTB-47 is recommended, but not required) or a copy of the condition inspection report with the forwarding address provided;*
- *A completed Proof of Service of Forwarding Address (Form RTB-41);*
- *A Tenant's Direct Request Worksheet (Form RTB-40); and*
- *The date the tenancy ended.*

I find that the tenants' application does not contain all of the required documents cited above and is therefore incomplete. The tenants have not provided a copy a completed Proof of Service of Forwarding Address form (Form RTB-41), a Tenant's Direct Request Worksheet (Form RTB-40), and a complete signed tenancy agreement.

Of particular relevance is that the tenants did not provide any evidence to demonstrate that they provided their forwarding address in writing to the landlord as required in accordance with section 38(1) of the Act. As it appears that the tenants may not have satisfied the requirement of providing their forwarding address to the landlord, it may not be open to the tenants to seek the return of their deposit pursuant to the other relevant subsections of section 38 of the Act.

Policy Guideline #49 establishes that the tenant must provide, when making an application for dispute resolution by direct request, a copy of the tenancy agreement. In the absence of a complete tenancy agreement which establishes that the parties listed on the Application for Dispute Resolution by Direct Request endorsed the terms of the tenancy agreement by the signing the agreement to enter into a tenancy, I find that the tenants' application contains a deficiency which does not permit me to consider this application for dispute resolution via the Direct Request process.

As noted above, the tenants have submitted an incomplete application which does not include the required documents cited in Policy Guideline # 49.

As previously indicated, 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 does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

I find that there are deficiencies with this application, as outlined above, which cannot be clarified within the narrow scope of the Direct Request process. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies. Based on the foregoing, I dismiss the tenants' application seeking the seeking the return of their security deposit and pet damage deposit, with leave to reapply.

It remains open to the tenants to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #49, can be met, or, in the alternative, the tenants may wish to submit an application for dispute resolution to be heard via a participatory hearing.

It remains open to the tenants to review section 38 of the Act to determine whether they have adhered to the requirement of providing their forwarding address in writing to the landlord at the end of the tenancy if the return of their security deposit and pet damage

deposit is sought. The tenants may wish to determine if they need to serve—or re-serve—their forwarding address in writing to the landlord using a method of service approved under section 88 of the Act.

Conclusion

I dismiss the tenants' application seeking the return of their security deposit and pet damage 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 21, 2020

Residential Tenancy Branch