



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 tenants for a Monetary Order seeking the return of their security deposit.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on April 02, 2020 the tenants served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail. The tenants provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days after service.

Based on the written submissions of the tenants, and in accordance with sections 89 and 90 of the *Act*, I find that the landlord is deemed to have received the Direct Request Proceeding documents on April 07, 2020, the fifth day after their registered mailing.

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*?

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 \$400.00.

As part of their evidentiary material package, the tenants provided a copy of a letter, dated March 04, 2020, addressed to the landlord which included the tenants' forwarding address. The tenants also asserted that their forwarding address was provided on a "Tenant's Notice of Forwarding Address for the Return of Security and/or Pet Damage Deposit" form (form RTB-47).

The tenants provided a copy of a "Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form" (Proof of Service form) on which the tenants asserted that the RTB-47 form and the March 04, 2020 letter were served to the landlord on March 04, 2020 by way of leaving a copy in the mailbox or mail slot at the landlord's residence.

The Proof of Service form includes only the name and signature of the tenant "DS" who attested to having served the RTB-47 form and March 04, 2020 letter, and does not include the name and signature of a witness.

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 a completed Proof of Service of Forwarding Address (Form RTB-41).

Policy Guideline # 49 also provides that if the tenant serves their forwarding address to the landlord by leaving a copy in the landlord's mailbox or mail slot, the tenant must provide a signed witness statement confirming the name of the person who served the document(s) by leaving them in the mailbox or mail slot, what document(s) they served, the date and time of service and the name of the person the documents were addressed to.

On the first page of the Proof of Service form (form RTB-41), the tenant has checked a box indicating that the documents containing his forwarding address were served to the landlord by leaving them in the mailbox or mail slot at the landlord's residence. If service of the documents was completed in this manner, the tenant must provide proof, such as a witness statement, including the name and signature of a witness, to confirm service of the documents containing the forwarding address.

On the second page of the Proof of Service form, under the section titled "Witness Statement", the form does not include the name and signature of a witness to confirm that the service was carried out as attested by the tenant, in the presence of a witness. Instead, the same tenant serving the documents, DS, has entered his own name in the field where the name of a witness is to be provided.

I find that the tenant is required to provide a completed Proof of Service form which includes the name and signature of a witness to confirm that the documents containing the forwarding address were served in accordance with the Act.

I find that the tenants have not demonstrated that service of the forwarding address was witnessed and completed in accordance with the Act, nor have the tenants provided the name and signature of a witness on the Proof of Service form, as is required within the Direct Request process.

The Proof of Service form provided by the tenant does not satisfy the requirements under the Direct Request Process to prove that the landlord was served with the forwarding address in accordance with the Act, as required under the provisions of the Direct Request process outlined in Policy Guideline #49. Based on the evidentiary material provided by the tenants, I find that I am not able to confirm service of the forwarding address to the landlord, which is a requirement of the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant 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 by way of the Direct Request Proceeding. 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.

I find that a participatory hearing will provide the proper venue to make a determination on the issues identified above and to hear the tenants' request seeking the return of their security deposit.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an Arbitrator appointed under the *Act* is required in order to determine the details of the tenants' application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

Each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to reply upon at the new hearing. For more information see our website at: gov.bc.ca/landlordtenant.

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

Lower Mainland: 604-660-1020
Elsewhere in BC: 1-800-665-8779

This interim 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 23, 2020