



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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 double the security deposit (the deposit).

The tenants submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 1, 2020, the tenants sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenants provided a copy of the outgoing e-mail containing attachments of the supporting documents to confirm this service. The tenants have also submitted a copy of three e-mails exchanged between the landlord and the tenants on April 27, 2020 to demonstrate that e-mail was used for tenancy issues.

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*?

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.

The tenants submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement indicating a monthly rent of \$1,850.00, a security deposit of \$925.00, and a pet damage deposit of \$925.00, for a tenancy commencing on April 1, 2020;

- A copy of a letter from the tenants to the landlord providing the forwarding address and requesting the return of the deposit; 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 security deposit paid by the tenants and stating the tenancy ended on March 14, 2020, before the tenants moved in.

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.

Paragraph 12 (1) (b) of the Residential Tenancy Regulations establishes that a tenancy agreement is required to "be signed and dated by both the landlord and the tenant." I find that the residential tenancy agreement submitted by the tenants is not signed by the tenants or the landlord.

I also note that the tenants uploaded a file in the place of the Proof of Service of the Forwarding Address (RTB-41), however, this PDF file has no content and a file size of 0 Bytes.

I find I am not able to consider the tenants' application without a copy of a signed tenancy agreement and the RTB-41 form, which are requirements of the Direct Request Process, and that a participatory hearing is necessary.

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. The applicants must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the landlord 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. Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential->

[tenancies/information-sheets/rtb114.pdf](#) that explain evidence and service requirements.

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

Victoria: 250-387-1602

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: May 01, 2020

Residential Tenancy Branch