



Dispute Resolution Services

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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 copy of a Canada Post Customer Receipt containing one Tracking Number to confirm a package was sent to the landlords by registered mail on May 4, 2020.

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 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.

In this type of matter, the tenants must prove they served the landlords with the Notices of Direct Request proceeding with all the required inclusions as indicated on the Notice

as per subsections 89 (1) and (2) of the *Act* which permit service “by sending a copy by registered mail to the address at which the person resides...”

The tenants must also prove that they served each landlord with the Notice of Direct Request in a manner that is considered necessary as per section 71(2) (a) of the *Act*.

Policy Guideline #49 on Tenant’s Direct Request provides the following requirements:

“Once the package is served, the tenant must complete and submit a Proof of Service Tenant’s Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding”

I note that the tenants submitted a copy of a Canada Post receipt containing a Tracking Number to confirm one package was sent to the landlords on May 4, 2020. However, the tenants have not provided a copy of the Proof of Service Tenant’s Notice of Direct Request Proceeding forms which is a requirement of the Direct Request process as detailed in Policy Guideline #49.

Furthermore, Policy Guideline #12 on Service Provisions provides the following requirement:

“All parties named on an application for dispute resolution must be served separate notice of proceedings, including any supporting documents submitted with the application, as set out in the Legislation”

I find that the registered mail receipt submitted by the tenants shows that the tenants have placed both Notices of Direct Request Proceeding in the same envelope with multiple persons named. I find the tenants have not sent two separate packages, serving the Notices of the Direct Request Proceeding to each of the parties individually as required by the *Act* and Policy Guideline #12.

For these reasons, 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: May 05, 2020

Residential Tenancy Branch