



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 tenant for a Monetary Order for the return of the security deposit (the deposit).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 8, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenant provided a copy of the outgoing e-mail containing attachments of the supporting documents to confirm this service.

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail if the sender and recipient e-mail addresses have been routinely used for tenancy matters.

The tenant submitted a copy of twenty-eight e-mails exchanged between March 5, 2020 and April 18, 2020, showing that the landlord and tenant regularly used e-mail to communicate about tenancy issues.

Based on the written submissions of the tenant and in accordance with the Director's Order, I find that the landlord is deemed to have been served with the Direct Request Proceeding documents on May 11, 2020, the third day after their e-mailing.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation for the return of a security deposit pursuant to sections 38 and 67 of the *Act*?

Is the tenant 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 tenant submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on August 10, 2019, indicating a monthly rent of \$4,600.00, a security deposit of \$2,125.00, and a key fob deposit of \$100.00, for a tenancy commencing on August 10, 2019;
- A copy of an e-mail from the tenant to the landlord dated April 18, 2020, providing the forwarding address and a copy of a reply e-mail from the landlord also dated April 18, 2020;
- A copy of a Proof of Service Tenant Forwarding Address for the Return of Security and/or Pet Damage Deposit form (Proof of Service of the Forwarding Address) which indicates that the forwarding address was sent to the landlord by e-mail at 6:28 am on April 8, 2020; 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 deposit paid by the tenant and indicating that the tenancy ended on March 10, 2020.

Analysis

The Residential Tenancy Branch's Director's Order on e-mail service dated March 30, 2020 provides that a document required to be sent in accordance with sections 88 and 89 of the *Act* may be sent by e-mail and is considered received on the day a reply e-mail is received.

The tenant submitted a copy of an e-mail dated April 18, 2020 providing the forwarding address. The tenant submitted a copy of a reply from the landlord also dated April 18, 2020.

For this reason, and in accordance with the Director's Order, I find that the landlord was served with the forwarding address on April 18, 2020.

Section 38(1) of the *Act* states that within fifteen days of the tenancy ending and the landlord receiving the forwarding address, the landlord may either repay the deposit(s) or make an application for dispute resolution claiming against the deposit(s).

I find that the fifteenth day for the landlord to have either returned the deposit or filed for dispute resolution was May 3, 2020.

However, section 90 of the *Act* states that a document sent by regular or registered mail is deemed received on the fifth day after it was sent. If the landlord returned the deposit by mail on their last day, the tenant may not have received the deposit until May 8, 2020.

I find that the tenant applied for dispute resolution on May 8, 2020, before they could have known whether the landlord complied with the provisions of section 38(1) of the *Act*, and that the earliest date the tenant could have applied for dispute resolution was May 9, 2020.

I find that the tenant made their application for dispute resolution too early.

Therefore, the tenant's application for a Monetary Order for the return of the security deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenant's application for a Monetary Order for the return of the security deposit with leave to reapply.

I dismiss the tenant's 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 11, 2020

Residential Tenancy Branch