



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding quadreal property group
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSDB-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 and the pet damage deposit (the deposits).

The tenants submitted a Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 7, 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.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation for the return of a security deposit and a pet damage 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 landlord with the Notice of Direct Request Proceeding with all the required inclusions as indicated on the Notice as per section 89 of the *Act*.

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

- The person acknowledges having received the e-mail;
- The person replies to the e-mail; or
- **The sender and recipient** e-mail addresses have been routinely used for tenancy matters.

On the Proof of Service of the Notice of Direct Request Proceeding, the tenants have indicated they sent the Notice of Direct Request Proceeding to the landlord by e-mail. The tenants submitted a copy of an e-mail from Tenant D.K. containing attachments of the supporting documents.

The tenants submitted a copy of six e-mails exchanged between the landlord and Tenant A.E. between March 9, 2020 and March 26, 2020.

However, the tenants have not submitted a copy of previous e-mails sent from or to Tenant D.K. to demonstrate Tenant D.K.'s e-mail account was regularly used for tenancy issues.

I find I am not able to determine whether the tenants' e-mail service can be considered received in accordance with the Director's Order and that a participatory hearing is necessary to address this issue.

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 11, 2020

Residential Tenancy Branch