



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenant for a Monetary Order for the return of the security deposit and the pet damage deposit (the deposits).

The tenant submitted a signed Proof of Service Tenant's Notice of Direct Request Proceeding which declares that on May 20, 2020, the tenant sent the landlord the Notice of Direct Request Proceeding by e-mail. The tenant provided a screen shot of an e-mail sent items folder showing the outgoing e-mail containing attachments of the supporting documents. The tenant also provided a copy of a delivery confirmation showing the e-mail was delivered on May 20, 2020.

Issue(s) to be Decided

Is the tenant 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*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Analysis

In this type of matter, the tenant 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 tenant has indicated they sent the Notice of Direct Request Proceeding to the landlord by e-mail.

However, the tenant has not submitted a copy of an e-mail reply from the landlord, an acknowledgement from the landlord that they received the e-mail, or a copy of previous e-mails exchanged between the landlord and the tenant to demonstrate the e-mail accounts were regularly used for tenancy issues.

I note that the tenant submitted a copy of an Interac e-Transfer showing the deposits were paid; however, I find that the landlord's e-mail address is not listed on this document.

The tenant also submitted a copy of a confirmation of delivery showing that the e-mail was successfully delivered to the landlord's inbox. However, I find that a delivery confirmation does not demonstrate that the e-mail was opened and viewed by the landlord. If the landlord's e-mail account was not regularly used for tenancy issues, the landlord may not be logging into their e-mail account on a regular basis, or the tenant's e-mail may have been delivered to the junk mail folder.

I find I am not able to confirm service of the Notice of Direct Request Proceeding, and for this reason the tenant's application for a Monetary Order for the return of the security deposit and pet damage deposit is dismissed with leave to reapply.

As the tenant was not successful in this application, I find 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 and the pet damage 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 22, 2020

Residential Tenancy Branch