



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 tenant for a Monetary Order seeking the return of his security deposit.

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on June 07, 2020, the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email. The tenant provided a copy of the June 07, 2020 email message addressed the landlord. The email message included five attachments.

On March 30, 2020, the Executive Director of the Residential Tenancy Branch (“RTB”) authorized a *Director’s Order* which, pursuant to sections 71(2)(b) and (c) of the *Residential Tenancy Act*, orders that until the declaration of the state of emergency made under the *Emergency Program Act* on March 18, 2020 is cancelled or expires without being extended:

a document of the type described in section 88 or 89 of the Residential Tenancy Act has been sufficiently given or served for the purposes of the Act if the document is given or served on the person in one of the following ways:

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;*

- *the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or*
- *the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed*

Based on the written submissions of the tenant, and pursuant to the above-noted *Director's Order*, and pursuant to sections 71(2)(b) and (c) of the Act, I find that the landlord is deemed to have received the the Direct Request Proceeding documents on June 10, 2020, three days after they were sent to the landlord by the tenant by way of email.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for the return of all or a portion of his security deposit pursuant to section 38 of the Act? If so, should it be doubled?

Is the tenant entitled to recover the filing fee for this application from the landlord 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.

On the tenant's Application for Dispute Resolution by Direct Request (the "application"), the tenant has requested a Monetary Order seeking a return of his security deposit in the amount of \$3,000.00.

The tenant provided a copy of a residential tenancy agreement which is incomplete. The tenancy agreement does not depict the amount of rent due under the tenancy, nor does it establish the particular day in the month (or other agreed-upon period) on which the rent is due.

The tenant also provided a copy of an email dated May 01, 2020, in which the tenant asks the landlord for the return of his portion of the security deposit, in the amount of \$500.00. The tenant additionally refers to having roommates.

The tenant also submitted a Tenant's Monetary Order Worksheet for an Expedited Return of Security Deposit and/or Pet Damage Deposit (the Monetary Order Worksheet) on which the tenant asserts that he paid a security deposit in the amount of \$1,500.00 on August 16, 2019, and now seeks the return of the security deposit in the amount of \$3,000.00. On the Monetary Order Worksheet, the tenant stated that after he vacated the rental unit, his roommate attended the condition inspection on his behalf. The tenant asserted that he vacated the rental unit on April 30, 2020 after his lease had ended.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the landlord to participate, there is a much higher burden placed on tenant in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the tenant must prove they served the landlord with the Notice of Direct Request Proceeding, the forwarding address, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. 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 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.

The Direct Request process is a mechanism that allows a tenant to apply for an expedited decision, and as such, the tenant must follow and submit documentation exactly as prescribed by the Act and Policy Guideline #49 – Tenant's Direct Request. There can be no omissions or deficiencies with items being left open to interpretation or inference.

Within the Direct Request process, the tenancy agreement is considered to be a vital document which establishes the parties to the tenancy agreement, the correct address of the rental unit, and the details agreed upon by the parties to the agreement, such as the day in the month on which the rent is due, and the agreed upon amount with respect to the rent payable for a specified period.

Residential Tenancy Policy Guideline # 49 contains the details about the key elements that need to be considered when making an application for Direct Request. Policy Guideline # 49 states that when making an Application for Dispute Resolution by Direct Request to seek return of a security deposit, the tenant must provide the following documents:

- *A copy of the signed tenancy agreement showing the initial amount of rent, the amount of security deposit required, and if applicable, the amount of pet damage deposit required;*
- *If a pet damage deposit was accepted after the tenancy began, a receipt for the deposit;*
- *A copy of the forwarding address given to the landlord (Form RTB-47 is recommended, but not required) or a copy of the condition inspection report with the forwarding address provided;*
- *A completed Proof of Service of Forwarding Address (Form RTB-41);*
- *A Tenant's Direct Request Worksheet (Form RTB-40); and*
- *The date the tenancy ended.*

Section 13 of the Act provides, in part, the following with respect to the requirements for tenancy agreements:

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

(f) the agreed terms in respect of the following:

(iv) the amount of rent payable for a specified period...;

(v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;

The manner in which the copy of the tenancy agreement provided by the tenant is drafted demonstrates that it does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the amount of rent owed with respect to the tenancy. Rather, on the tenancy agreement, in the field where the parties are to enter the agreed upon amount of rent payable, there is not an amount listed in the box in which a monetary amount is to be indicated as the specified amount of rent owing with respect to the tenancy, as that field was left blank.

The tenancy agreement contains an additional deficiency, as it does not specify the day in the month, or in the other period on which the tenancy is based, on which the rent is due.

The information provided by the tenant gives rise to questions that cannot be clarified within the Direct Request process. The tenant has not provided any evidentiary material to demonstrate that he paid a security deposit in the amount of \$1,500.00 on August 16, 2019 as attested on the Monetary Order Worksheet. Additionally, the information provided on the Monetary Order Worksheet conflicts with the tenant's statement in his May 01, 2020 email, in which he states that he seeks the return of his portion of the security deposit in the amount of \$500.00. The tenant has not provided any information to clarify why there is a discrepancy in the amount of the security deposit that the tenant attests to having paid.

In his May 01, 2020 email, the tenant states the following:

"You can repay me my share, \$500, of the deposit as well as my roommates"

The manner in which the tenant's statement is drafted gives rise to questions such as whether the tenant's roommates also vacated the rental unit or whether the tenant alone vacated the rental unit, such that his roommates continued residing in the rental unit under the tenancy and thereby continuing the tenancy.

By requesting his share of the deposit in the amount of \$500.00, the tenant's statement suggests that he may have sought only the amount of the security deposit that he paid and that the tenancy may have remained in effect if his roommates continued residing in the rental unit; the tenant has not clarified whether he alone vacated the rental unit or whether all tenants included in the tenancy vacated the rental unit. Therefore, the

tenant's statement gives rise to the question of whether the tenancy ended, or whether the tenant alone vacated the rental unit with the tenancy remaining in effect if the other tenants continued residing in the rental unit.

Based on the foregoing, and in the absence of a complete tenancy agreement which fulfills the requirements for a tenancy agreement as defined in section 13 of the Act, I find that the tenant's application contains deficiencies which do not permit me to consider this application for dispute resolution via the Direct Request process.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicant tenant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. I find that there are deficiencies with this application, as outlined above, which cannot be clarified by way of the Direct Request Proceeding. These deficiencies cannot be remedied by inferences in the absence of more evidentiary material, or oral testimony, which may clarify the questions raised by these inconsistencies.

Based on the foregoing, I find that I am not able to consider the tenant's Application for Dispute Resolution by way of the Direct Request process and that a participatory hearing is necessary. I find that a participatory hearing will provide the proper venue to hear the tenant's application for a monetary order seeking the return of his security deposit.

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 tenant's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant 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. 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

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: June 09, 2020

Residential Tenancy Branch