



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 seeking the return of his security deposit and pet damage deposit (collectively, the “deposits”).

The tenant submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on May 28, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email.

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 landlord, 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 Direct Request Proceeding documents on May 31, 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?

Is the tenant entitled to a monetary award for the return of all or a portion of his pet damage deposit pursuant to section 38 of the Act?

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 and pet damage deposit in the amount of \$2,500.00.

The tenant provided a copy of a "Tenant's Notice of Forwarding Address for the Return of Security Deposit" form ("forwarding address form"). The tenant stated that he provided his forwarding address in writing on the forwarding address form.

The tenant also provided 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 form) which depicts that the tenant served the forwarding address

form containing his forwarding address by way of registered mail addressed to the landlord on May 12, 2020.

Analysis

I have reviewed all documentary evidence provided by the tenant. Section 90 of the Act provides that because the forwarding address form containing the tenant's forwarding address was served by registered mail, the landlord would be deemed to have received the forwarding address form containing the tenant's forwarding address five days after its mailing. In accordance with sections 88 and 90 of the Act, I find that the landlord would be deemed to have received the forwarding address form containing the tenant's forwarding address on May 17, 2020, five days after its registered mailing.

Section 38(1) of the Act states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

I find that the tenant applied for dispute resolution seeking the return of his security deposit and pet damage deposit on May 27, 2020. If the landlord received the forwarding address form containing the tenant's forwarding address on May 17, 2020, the landlord's last day to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s) in accordance with section 38(1) would have been June 01, 2020.

Therefore, the tenant did not provide the landlord 15 days to return the security deposit and pet damage deposit or file an application for dispute resolution in accordance with section 38(1) of the Act. Based on the foregoing, I find that the tenant made his application for dispute resolution claiming against the deposits earlier than permitted under the Act.

Therefore, the tenant's application for a Monetary Order seeking 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 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 seeking the return of the security deposit and pet damage deposit, with leave to reapply

I dismiss the tenant's request to recover the \$100.00 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: June 02, 2020

Residential Tenancy Branch