



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 tenants for a Monetary Order seeking the return of their security deposit and pet damage deposit (collectively, the “deposits”).

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on May 27, 2020 the tenants served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for the return of all or a portion of their security deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Are the tenants entitled to a monetary award for the return of all or a portion of their pet damage deposit pursuant to section 38 of the *Act*? If so, should it be doubled?

Are the tenants entitled to recover the filing fee for this application from the landlord pursuant to section 72 of the *Act*?

Analysis

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.

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 – Deposits”. There can be no omissions or deficiencies with items being left open to interpretation or inference. 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*.

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*

On the Proof of Service of the Tenant's Notice of Direct Request Proceeding form, the tenants have attested that they sent the Notice of Direct Request Proceeding to the landlord by email. However, the tenants have not provided any supporting evidence in order to prove that the criteria to determine that the landlord has been served in accordance with the Residential Tenancy Branch's Director's Order on email service dated March 30, 2020 has been met.

The tenants did not provide a copy of the outgoing email that they purportedly sent to the landlord on May 27, 2020, nor did they provide the email address belonging to the landlord to which the documents were purportedly sent.

Additionally, the tenants have not submitted a copy of an email reply from the landlord, an acknowledgement from the landlord that he received the tenants' email, or a copy of previous emails exchanged between the landlord and the tenants to demonstrate the respective email accounts for the parties were regularly used for tenancy issues.

Based on the foregoing, I find I am not able to confirm service of the Notice of Direct Request Proceeding documents to the landlord in accordance with the Director's Order. For this reason, the tenants' application for a Monetary Order seeking the return of their security deposit and pet damage deposit is dismissed with leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the tenants' application for a Monetary Order seeking the return of their security deposit and pet damage deposit, with leave to reapply.

I dismiss the tenants' 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: June 04, 2020

Residential Tenancy Branch