



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 tenants for a Monetary Order seeking the return of their security deposit and pet damage deposit.

On the tenants' Application for Dispute Resolution by Direct Request (the "application"), the tenants asserted that they served the landlord with the Notice of Direct Request Proceeding via email on June 08, 2020. The tenants provided a copy of an email message, dated June 08, 2020, addressed to the landlord.

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 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 the Direct Request process, the tenants must prove they served the landlord with the Notice of Direct Request proceeding documents with all the required inclusions in accordance with subsections 89(1) and (2) of the *Act*. Under the provisions of “Policy Guideline #49 Tenant’s Direct Request – Deposits”, the onus is on the tenant to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*.

However, Policy Guideline #49 states that the tenant must complete and submit the “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” (Form RTB-50) that was included as part of the tenant’s Direct Request package. Policy Guideline #49 provides, in part, the following:

Serving of the Notice of Dispute Resolution Proceeding package:

Once the package is served, the tenant must complete and submit a Proof of Service Tenant’s Notice of Direct Request Proceeding (Form RTB-50) which is provided by the Branch with the Notice of Dispute Resolution Proceeding. Once the package is deemed served, the Branch can adjudicate the dispute.

The tenants assert that the landlord was served with the Notice of Direct Request Proceeding documents via email. Although the tenants have attempted to prove service of the documents by providing a copy of an email sent to the landlord, I find that within the Direct Request Process, the tenants remain obligated to prove service of the documents by completing the Proof of Service of the Tenant's Notice of Direct Request Proceeding form (form RTB-50) that was included as part of the tenants' Direct Request package.

As the tenants have not completed and submitted the Proof of Service of the Tenant's Notice of Direct Request Proceeding form (form RTB-50) as required under the provisions of Policy Guideline #49, I find that the tenants have not sufficiently established that the Direct Request Proceeding documents have been served in accordance with the Act and Policy Guideline #49, and further find that I am not able to confirm service of the Notice of Direct Request Proceeding to the landlord, which is a requirement of 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 dismiss the tenants' application seeking the return of their security deposit, with leave to reapply.

It remains open to the tenants to reapply for dispute resolution via the Direct Request process if all requirements for an application for dispute resolution via Direct Request, as outlined in Policy Guideline #49, can be met, or, in the alternative, the tenants may wish to submit an application for dispute resolution to be heard via a participatory hearing.

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 seeking the return of their security deposit, with leave to reapply.

I dismiss the tenants' 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 10, 2020

Residential Tenancy Branch