



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM 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.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form which declares that on May 29, 2020, the tenants served the respondent with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email. The tenants provided a copy of the May 29, 2020 email message addressed to the applicant, which included attached files.

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 tenants, 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 respondent is deemed to have received the the Direct Request Proceeding documents on June 01, 2020, three days after they were sent to the respondent by the tenants by way of 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 and pet damage deposit pursuant to section 38 of the Act?

Are the tenants 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 tenants' Application for Dispute Resolution by Direct Request (the "application"), the tenants have requested a Monetary Order seeking a return of their security deposit and pet damage deposit in the amount of \$1,450.00.

The tenants submitted, in part, the following evidentiary material:

- A copy of a residential tenancy agreement which listed the landlord as being an individual bearing a different first name than the first name provided for the individual identified as the respondent landlord on the application for dispute resolution.

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. Under the provisions of Policy Guideline #49 – Direct Requests, when making an application for dispute resolution through the direct request process, the tenant must provide copies of documents showing changes to the tenancy agreement or tenancy, such as rent increases, or changes to parties or their agents [emphasis added].

I have reviewed all documentary evidence and find that the tenancy agreement listed the landlord as being an individual bearing a different first name than the first name

provided for the individual listed as the respondent landlord on the application for dispute resolution.

Based on the foregoing, I find that the evidentiary material provided by the tenants brings into question whether the correct landlord is identified on the application for dispute resolution.

The tenants have not provided any additional information or evidence to clarify the discrepancy in the landlord's name as noted above.

As previously indicated, in an ex parte Direct Request Proceeding, the onus is on the applicants 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 that cannot be clarified by way of the Direct Request Proceeding, as the application before me brings into question whether the landlord is correctly identified on both the application for dispute resolution and on the tenancy agreement. 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 tenants' Application for Dispute Resolution by way of the Direct Request process and determine that a participatory hearing will provide the proper venue to clarify the issues cited above and to hear the tenants' application for a monetary order seeking the return of their security deposit and pet damage 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 tenants' 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 10, 2020

Residential Tenancy Branch