



Dispute Resolution Services

Page: 1

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.

The tenants submitted a signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” form on which the tenants assert that on May 26, 2020, the tenants served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via registered mail.

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*?

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

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.

In the Direct Request process, the tenant must prove they served the landlord with the Notice of Direct Request proceeding with all the required supporting documents in accordance with subsections 89(1) and (2) of the *Act*, which permit service “by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.” The definition of registered mail is set out in section 1 of the *Act* as “any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.”

Under the provisions of Policy Guideline #49 – Tenant’s Direct Request, the onus is on the tenant to serve the Notice of Direct Request Proceeding in a manner approved under section 89 of the *Act*. 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 (Form RTB-50) that was included as part of the tenant’s Direct Request package provided by the Residential Tenancy Branch with the Notice of Dispute Resolution Proceeding.

Policy Guideline #49 provides, in part, the following:

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.

The Proof of Service of the Tenant's Notice of Direct Request Proceeding (form RTB-50) provides the following instructions to the tenant if the Notice of Dispute Resolution Proceeding Package was served to the landlord via registered mail:

"Please attach a completed Canada Post Registered Mail Receipt."

On the Proof of Service of the Tenant's Notice of Direct Request Proceeding form, the tenants have indicated that the landlord was served with the Direct Request Proceeding documents by way of registered mail. If service of the Direct Request Proceeding documents is carried out in this manner, the tenant must provide evidentiary material, in the form of a Canada Post Registered Mail receipt or ticket which includes the tracking number, as well as the name of the person to whom the registered mail item was addressed, as proof of service via registered mail.

The tenants have not provided any documentary evidence, such as a Canada Post customer receipt or registered mail ticket containing the tracking number, to confirm the mailing and to demonstrate that the landlord was served with the Direct Request Proceeding documents by way registered mail.

I find that there is no evidentiary material before me to prove that the tenants served the Direct Request Proceeding documents by way of registered mail. The tenants have not provided a Canada Post Registered Mail receipt or registered mail ticket with a tracking number to confirm that service of the documents was carried out by way of registered mail. Therefore, I find that I cannot confirm that the landlord has been served with the Direct Request Proceeding documents in accordance with the *Act*.

Based on the foregoing, I find that the tenants have not proven service of the Notice of Direct Request Proceeding documents containing a copy of the application for dispute resolution in accordance with the *Act*. Therefore, I dismiss the tenants' application for a Monetary Order 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, and the requirements for service of documents, as prescribed in Section 89 of the *Act*, 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

The tenants' application for a Monetary Order for the return of their security deposit is dismissed with leave to reapply.

The tenants' application to recover the filing fee paid for this application is dismissed 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