



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR

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.

The tenant submitted two signed “Proof of Service of the Tenant’s Notice of Direct Request Proceeding” forms which declare that on June 01, 2020 the tenant served the landlord with the Notice of Direct Request Proceeding, along with copies of supporting documents, via email. The tenant asserts that he served the Notice of Direct Request Proceeding documents to the landlord’s agents “BN” and “HW.”

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*?

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 tenant has attested that he sent the Notice of Direct Request Proceeding to the landlord's agents by email. However, the tenant has 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 tenant did not provide a copy of the outgoing email messages that he purportedly sent to the landlord's agents "BN" and "HW" on June 01, 2020, nor did he provide the respective email addresses belonging to either BN or HW to which the documents were purportedly sent.

Additionally, the tenant has not submitted a copy of an email reply from either BN or HW, an acknowledgement from either BN or HW that they may have received the tenant's email, or a copy of previous emails exchanged between either BN or HW and the tenant 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 tenant's application for a Monetary Order seeking the return of his security deposit is dismissed with leave to reapply.

Conclusion

I dismiss the tenant's application for a Monetary Order seeking the return of his security deposit, with 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 15, 2020

Residential Tenancy Branch