



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 June 07, 2020, the tenants served the landlord with the Notice of Direct Request Proceeding via email. The tenants provided a copy of the June 07, 2020 email message addressed to an email address which the tenants assert belongs to the landlord. The tenants provided copies of past email correspondence with the landlord which depicts that the parties had recently communicated by way of email.

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 landlord is deemed to have received the the Direct Request Proceeding documents on June 10, 2020, three days after they were sent to the landlord 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 pursuant to section 38 of the Act? 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? 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

in the amount of \$600.00 and the return of their pet damage deposit in the amount of \$600.00.

The tenants' Application for Dispute Resolution by Direct Request was submitted to the Residential Tenancy Branch on June 04, 2020.

In their application, the tenants asserted that they provided their forwarding address in writing on a typed document, which along with a move-out letter dated April 29, 2020, was submitted to the landlord via two methods. The tenants stated that the aforementioned documents containing their forwarding address were left in the rental unit on April 30, 2020 and were also sent to the landlord by way of email on May 20, 2020.

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

Section 88 of the *Act* provides the approved methods by which documents can be served. Section 88 reads, in part, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or 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;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];

The tenants stated that on April 30, 2020, they left the documents containing their forwarding address in writing left inside the rental unit.

I find that the information provided by the tenants does not demonstrate that the documents were attached to the door of the rental unit, and does not demonstrate that the documents were attached to any specific conspicuous location. I further find that the tenants have not provided any information to demonstrate that the documents were attached at all in order to comply with a method of service approved under section 88 of the *Act*.

Rather, the information provided by the tenants is vague and limited in scope and only provides that the documents were left inside the rental unit at large, without reference to any specific location within the rental unit to clarify where inside the rental unit the documents may have been left, and fails to establish that the documents were attached in a conspicuous place in accordance with the provisions of section 88 of the *Act*.

Section 88 of the *Act* does not allow for documents to be left inside of a rental unit in general. Based on the foregoing, I find that the tenants have not demonstrated that the documents containing their forwarding address, served on April 30, 2020, were properly served in accordance with the *Act*. Therefore, I find that this method of service does not comply with the *Act* and I find that I cannot find that the landlord was served with the tenants' forwarding address in this manner on April 30, 2020.

Section 38(1) of the *Act* states that the landlord has fifteen days from the end of tenancy and the date they received the forwarding address to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s).

I find that the tenants applied for dispute resolution seeking the return of their security deposit and pet damage deposit on June 04, 2020.

The tenants stated that they served the documents containing their forwarding address to the landlord by way of email on May 20, 2020.

Even if the landlord received the tenants' email message containing the tenants' forwarding address on May 20, 2020, the landlord's last day to either return the deposit(s) in full or make an application for dispute resolution claiming against the deposit(s) in accordance with section 38(1) would have been June 05, 2020.

Therefore, the tenants did not provide the landlord 15 days to return the security deposit and pet damage deposit or file an application for dispute resolution in accordance with section 38(1) of the *Act*. Based on the foregoing, I find that the tenants made their application for dispute resolution claiming against the deposits earlier than permitted under the *Act*.

Therefore, 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' 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 23, 2020

Residential Tenancy Branch